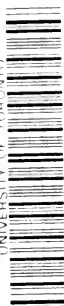


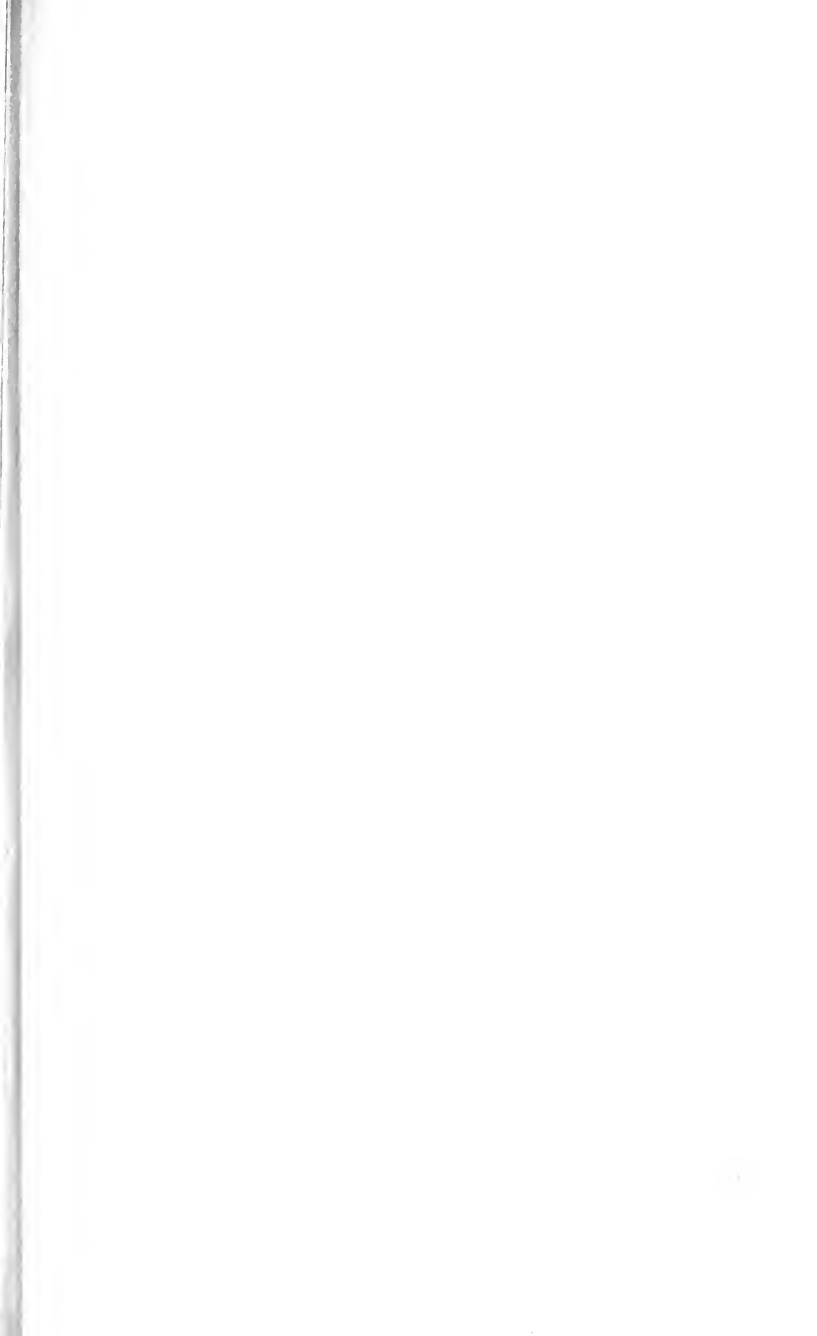
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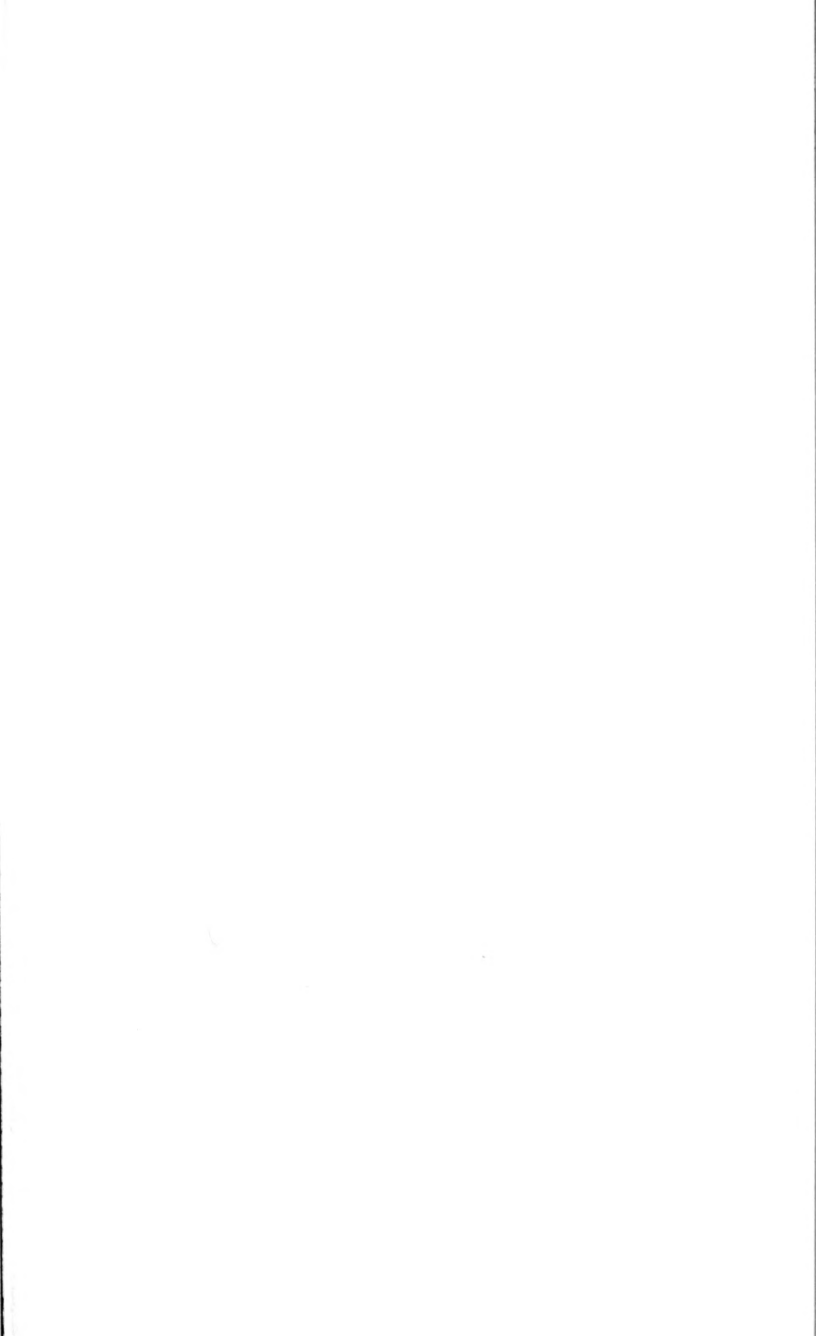
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AN ACCOUNT

OF

THE LIFE AND TIMES

OF

FRANCIS BACON.

EXTRACTED FROM THE EDITION OF HIS OCCASIONAL  
WRITINGS BY JAMES SPEDDING.

IN TWO VOLUMES.

VOL. II.



BOSTON:  
HOUGHTON, OSGOOD AND COMPANY.

The Riverside Press, Cambridge.

1878.

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# FRANCIS BACON AND HIS TIMES.

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## BOOK V.

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### CHAPTER I.

A. D. 1613-1614. ÆTAT. 54.

THE question of calling a new Parliament, which had been postponed in the preceding summer,<sup>1</sup> does not appear to have been formally agreed upon in Council till the middle of February. But I think the King had made up his mind to it before. A letter of Bacon's, which dates itself by a reference to the rejoicings upon the birth of the King's grandchild as written not long after the 9th of January, 1613-14, shows that before that time the King had been speaking with him about the preparatory measures, and had also been in communication with "those gentlemen which professed to do him service in Parliament;" — who could be no other than Sir Henry Neville and his party; afterwards known as the "Undertakers." It shows also (which is a fact of some importance) that though desirous to make the best of their services, Bacon himself augured little good from their intervention.

TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT M., — I most humbly pray your M. to receive into your royal remem-

<sup>1</sup> See vol. i., p. 687.

brance that one point whereof you spake unto me : which is this ; to put but this case to those gentlemen which profess to do you service in Parliament, and desire (as they say) but to have some matter whereupon to work : If your M. be resolved not to buy and sell this Parliament, but to perform the part of a King, and not of a merchant or contractor, what they can desire or propound for the satisfaction and comfort of your people.

Of this three uses may be made.

First, if they fall upon an answer as to say, That the Parliament is so now in taste with matters of substance and profit, as it is in vain to think to draw them on but by some offer of that nature, then for my part I shall little esteem their service if they confess themselves to be but brokers for bargains.

Secondly, if they do devise and propound anything that is fit, then that it be followed and pursued, because they are likeliest to be in love with their own child, and to nourish it.

Thirdly, if they show good will to devise some such thing, but that their invention prove barren, in that their proposition be not such but that better may be found, then that they may be holpen by some better proposition from your M. whereupon they may work.

This, because time runneth, I beseech your M. may be put unto them by some such means as your M. is pleased to use, as soon as may be.

I most humbly pray your M. also to take into consideration, that it may be inconvenient for your M. to have a Parliament in England and a Parliament in Ireland at one time. And therefore I do wish that the Parliament of Ireland (when time shall be) may upon some occasion fitly taken be put off. For I beseech your M. to observe this argument further : That the unsettled business of the Parliament of Ireland is a just ground for the Parliament of England to furnish your M. with treasure *in*

*omnem eventum.* And on the other side the loving and frank proceeding with you by your Parliament of England will daunt the ill affected part of the Parliament of Ireland.

If your M. had heard and seen the thunder of the bells and the lightning of the bonfires for your grandchild, you would say there is little cause to doubt the affections of the people of England *in puris naturalibus*. God preserve your Majesty. I rest

Your M.'s most bounden servant,

FR. BACON.

What particular communications passed between the King and the "Undertakers," I have not been able to discover. But there is some reason to believe that he put to them the question which Bacon suggested; that they in reply submitted to him their proposition; and that he referred it to his Learned Counsel for their report. It is certain that some proposition relative to the coming Parliament, and involving a variety of questions, was referred to them by the King some time before the 17th of February; and it is not likely to have come from the Council of State, because it was not till the 16th that the Lords of the Council made up their minds to recommend the calling of a Parliament at all. The Learned Counsel asked leave to deliver their report by word of mouth; which I presume they did; though no record remains of what passed at the interview.

But in the Council of State in the mean time the dissentient party had at last given way. A resolution had been passed that it was expedient to call a Parliament with as little delay as possible. With that view the petition of grievances had been perused, and a selection made of those which might without prejudice be redressed. And in a list which has been preserved of the titles of several bills to be drawn or to be further consulted upon,

we may trace the resultant of the various forces that were acting upon the government.

The first eight of these being described as bills to be drawn "upon certain of the propositions exhibited unto his Majesty," I take them to be the practical result of the King's communications, first with the "Undertakers," and afterwards with his Learned Counsel; the "propositions exhibited unto his Majesty" being those which they had submitted in answer to the question which by Bacon's advice he had put to them: the "bills to be drawn" upon them being the "following and pursuing" by the government of such of them as were reported by the Learned Counsel to be "fit;" while the remainder of the list, — consisting of bills to be drawn "upon other heads besides those that were propounded," of "secret bills," and of "other bills to be propounded, not yet consulted upon," — represents probably the policy of the regular advisers of the government, and the measures which they thought it expedient to urge, or to offer, or to acquiesce in.

In this list will be found most of the measures suggested by the petition of grievances, or forming part of the "retribution" offered in the Great Contract, or brought forward independently by Bacon himself in Parliament or otherwise, in the interest of the Commonwealth; measures for the removal or mitigation of the various inconveniences and vexations arising out of the old feudal tenures; measures for the suppression of practices injurious to society, such as piracy and dueling; measures for the protection and encouragement of trade and commerce, according to the political economy of that day; measures for the better and cheaper administration of justice, for the furtherance of colonization, for the suppression of abuses in various kinds, and for enforcing by statute-law injunctions or prohibitions, believed to be salutary, but for which admonitions by Royal Proclamation were not

only ineffectual, for want of penalties that could be legally enforced in case of disobedience, but mischievous, because of the jealousy which they excited and the pretensions which they seemed to imply. And if we may take the titles (being all we have) as indicating the policy and intentions of the government, it is impossible, I think, to look through the list without feeling that, however the want of money may have been the immediate occasion of calling this Parliament, it was not the less called for the dispatch of divers weighty affairs affecting the great interests of the kingdom; and that if the Parliament could have met the government in a corresponding spirit, the result might have been a session memorable to after times for the number of good laws enacted in it.

There were rocks in the way, however, which it required discreet steering to avoid. On the subject of Impositions, the King, in his answer to the petition of the Commons on the 10th of July, 1610, though he had conceded a great deal, had not conceded enough to satisfy them. The scantiness of the supply which they then consented to vote was ascribed essentially to their resentment of his resolution to maintain the existing impositions as last arranged by Salisbury, even though accompanied with a promise to impose no more; — a resolution which he had since reiterated.<sup>1</sup> Now I do not find that anything had occurred since 1610 to make that controversy easier of settlement. For I cannot think that a proposition which seems to have been urged by Sir Henry Neville would have answered the purpose; namely, that a grant should be made to the King for his life by Parliament of the existing impositions: since it was recommended on the very ground that it would make no substantial difference in either of the points which were most stood upon; either the constitutional question of

<sup>1</sup> See *ante*, vol. i., p. 616.

the right to impose, which was a matter of immense importance for the future, or in the actual pressure of the tax, which was the immediate grievance. So that if they were not satisfied with the King's offer in 1610 to "assent to an act by which his power should be suspended from imposing any more upon merchandises without consent of Parliament,"<sup>1</sup> it is difficult to conceive why they should have been better satisfied now with the arrangement proposed by Neville. With regard again to the Ecclesiastical Grievances, which were left very much as they were, I do not find that anything had happened either to make the people forget them or to reconcile the King to their removal. Nor does it appear that the "Undertakers" had any measure on this head to recommend. For though Mr. Gardiner has "little doubt that if Neville had been called on to speak plainly, he would have pointed to the ecclesiastical grievances as those which it was most necessary to redress," yet as he was not restricted to the answering of questions asked, but delivering himself of a piece of free and voluntary advice, and professing to offer as complete a collection as he could of the "things which had been by several men desired to be obtained of his Majesty for the good of his people," and as he made no mention whatever of ecclesiastical grievances either in the memorial or the collection which accompanied it, — if we may not infer that they were not the grievances which seemed to him to stand most in need of redress, we must at least conclude that he had no practical measure of redress to suggest.

With combustibles of this kind lying so near the surface, and so ready to take fire, a safe passage could only be secured by more discreet behavior on both sides than in their present temper could well be expected from either. But the experiment was to be made.

The writs were out before the end of February; and

<sup>1</sup> See *ante*, vol. i., p. 615.



during March all England was busy with the election of knights and burgesses for a parliamentary campaign in which questions were to be dealt with that were interesting to everybody. Bacon, we have seen, though far from thinking that such a business ought to be left to chance, without any care taken to promote the election of the better sort of candidates or hinder that of the worse, had nevertheless warned the King against "brigues and canvasses," which, he said, "would but increase animosities and oppositions," and would also destroy the moral value of success — "making whatever should be done to be in evil conceit with the people in general afterwards." But when such eager passions and such strong personal interests were enlisted on both sides, it was impossible to prevent zeal from overflowing. There was a great deal of canvassing, and the effect of it upon popular opinion was exactly what Bacon anticipated, and showed itself immediately. As early as the 3d of March we find Chamberlain reporting to Carleton, — "Here is much justling for places in Parliament, and letters fly from great persons extraordinarily : wherein methinks they do the King no great service, seeing the world is apt to censure it as a kind of packing." It is true that the interference was not generally successful. "Letters and countenance," he writes again on the 17th, "prove not so powerful as was imagined, even in the meaner boroughs." But that did not mend the case. If they were ineffectual, it was because the adverse party was too strong. Where they failed to overcome opposition, they would exasperate and strengthen it. And the result of the election was the return of a House of Commons in which two thirds of the members had never been in Parliament before, — heavy odds against order and regularity, and that conformity to ancient usage by which alone any numerous popular assembly can be preserved from mere distraction and confusion. .

In the mean time the near approach of the day fixed for the meeting of the new Parliament had at length forced the King to choose a secretary of state ; it being absolutely necessary that the Government should be represented in the House by somebody who was in a position to lead. And very unlucky he was, either in having no one to choose who knew the House of Commons, or in not choosing such a one from those he had. To commit a new team to a driver to whom whip and reins are new is the way to be upset. To commit the management of the King's business in a new House of Commons, elected under circumstances so novel and so critical, to a man who had never seen the inside of any House of Commons and was almost a stranger to England, having spent his life in employments abroad, was the way to have the King's business miscarry. And yet such a person was Sir Ralph Winwood, a man of good character, good abilities, and considerable experience ; who had done valuable service as minister in France and in Holland ; but whose experience was not English, whose manners were rough and ungracious, and who was so new to Parliament that (as was observed at the time) " the first person he heard speak in that place was himself." He had returned to England in September, upon hope of the vacant secretaryship, and so had had the benefit of a half a year's study of the state of opinion in the country : on the 26th of March he was sworn in : and on the 5th of April he had to take his place in the House of Commons, as principal minister of the Crown.

What with undertakers in Parliament, what with electioneering in the country, what with a House of Commons containing so many who had had no experience in its forms and orders of proceeding, what with a leader who had had no experience of the nature and temper of the House, — Bacon must have begun, before March was out, to feel anxious about the issue. Nor could he have

felt quite easy as to the manner in which the King would get through his own part ; which though very fit for him to learn, was not one for which nature had accomplished him. To assume an air of personal indifference to matters about which he was in fact extremely and reasonably anxious, was not an easy task for one of the most unaffected men, I do not say that ever reigned, but that ever lived. But it was what he had to try to do. Since Salisbury's death he had been his own prime minister. His manner of dealing with his new Parliament was to show what the effect had been of looking into his affairs himself, and what his own nature was, when seen without any interposing medium. He was to "proceed with his Parliament in a more familiar and yet a more princely manner." Unfortunately (though it was a misfortune connected with some of his best qualities), he did not know how to be princely where he was familiar, nor to be familiar where he was princely. As a man, he had no reserve; as an official, he had no condescension. To assist him in his task, Bacon drew up (whether by direction or as a voluntary offering, I do not know) a sketch of the speech which he wished him to make to the two houses when they met, which was in fact the completion of his advice as to the course which he ought to hold with his Parliament. I take it that the things which he would have had the King encourage the people to expect from him, were the things to which he wished him to commit himself. To some courses indeed he was already committed, not by Bacon's advice, but against it, and these had to be accepted and made the best of. The policy of opening the session with an ostentatious offer of popular concessions under the title of "Bills of Grace," by way of inviting a corresponding liberality from the Lower House, was the policy of the "undertakers," and would not have been recommended by him : but being resolved on, it had to be dealt with and the best color

put upon it. The negotiations with the "undertakers" themselves were also (as we have seen) impolitic in his opinion; and the rumor of them had already done mischief; insomuch that he thought it necessary for the King to take notice of it in his speech, and endeavor to allay the discontent which it had excited, by disclaiming all reliance upon the service of particular persons in the House. These were difficulties which he would not have had to deal with if the King had acted from the beginning by his advice. But in the main I think we may take this memorial as expressing his idea not only of the tone and manner which the King should assume in addressing his Parliament, but of the policy which he should make up his mind to pursue.

An ostensible *occasion* for calling a Parliament at this time — an occasion unconnected with the money question, and upon which no difference of opinion could arise — was conveniently supplied by the birth of the King's grandson; upon which some congratulatory demonstration from the two Houses was a thing natural and politic and agreeable to the feelings of the nation. A glance at the political state of Europe (naturally suggested by the political considerations connected with the marriage of which the new-born child was the issue) would introduce the subject of supply of treasure, not with reference to the King's personal debts and difficulties, but as a condition without which England could not be expected either to hold her own among the other Powers in case of disturbance, or to pursue at home a policy as liberal as might otherwise be preferred. Thence it would follow by a natural consequence, to speak of the abortive proceeding of the last Parliament, to disavow the policy out of which it grew, and explain the difference of the course which (now that he had looked into the matter with his own eyes, and was acting on his own judgment) he meant to pursue with this. And in connection again

with this would follow, by a transition equally natural, some intimation, both of what he hoped from them now, and what they might expect from him, whenever his affairs should be so settled as to let him act as he would. Under which head an announcement of his determination, with or without their help, to set his finances straight at once, and then to make a thorough reform in his financial administration, — and especially to keep always apart from the rest and sacred to its proper uses, whatever provision was required for the public services, — would doubtless be received with great satisfaction and would silently remove out of the way the most reasonable objection to liberality in subsidies; namely, that they were not always applied to the purposes for which they were granted.

According to this scheme, whatever it was expedient to communicate to the Parliament, either in the way of information or admonition or warning or promise, could be conveyed quite naturally and decorously, without either begging or expostulating or rebuking or threatening. And though it was not to be supposed that the King wanted anybody to show him how to make a speech, it might help him to conceive the situation; and if he took in the idea, he might work it out in his own way with very good effect. How far he succeeded, it is not easy to say; for in a matter which turns upon the judicious management of words, the best reports of his speech which I have seen are not full enough or accurate enough to judge by. That he had Bacon's advice in his mind, and was trying to act upon it, is evident all through. But I gather that he did not play very well a part for which he had no great fancy. "On Saturday, in the afternoon," says Chamberlain, "the King made a speech to the whole assembly in the Great Banqueting-Chamber, wherein he laid out his wants, and descended as it were to entreating to be relieved, and that they would

show their good affection towards him in such sort, that this Parliament might be called 'the Parliament of Love.' In which kind, to begin and train them in the way, he offered them certain graces and favors, not in the way of merchandising (which course he will not allow, nor cannot abide to hear of), but of mere good-will and *motu proprio*." From which it would seem that he had shown a good deal too much of the seamy side of his meditations, and had not been altogether successful in producing the impression which Bacon wanted.

In this Parliament, though the government candidates had been defeated in many places, Bacon himself had found no difficulty in obtaining a seat. He had been returned at the same time for St. Alban's, for Ipswich, and (though the fact was not known to Willis) for Cambridge University, to which he had been appointed standing Counsel, and had also made himself agreeable the last Christmas by contributions of venison to the college festivities. The election did not pass without opposition : but it appears to have been directed entirely against the second candidate ; whom indeed the Vice-Chancellor pronounced to be ineligible, and refused to return ; and whose return was effected at last by a proceeding which seems to have been quite out of order. Whether the opposition was really on political grounds, and what it meant, or whether it meant anything, I cannot clearly make out. What is certain is that the members elected, — Bacon and Sir Miles Sandys, — represented the large majority of votes.

But though he obtained his seat thus easily for three several constituencies in the country, he very narrowly escaped losing it upon an objection unexpectedly taken in the House ; an objection of no good omen for the King's business. He had been returned for Cambridge University on the 2d of April ; on the 5th he elected to serve for that place, and took the oaths. On the 8th,

question was raised whether, being Attorney General, he was eligible. Whereupon a committee was appointed "to search for precedents where any Attorney General to any King or Queen of this realm hath been chosen and served as a member of this House." By an odd accident it turned out that there was no precedent exactly in point. Privy Councillors had constantly been elected and served : King's Sergeants had been elected and served : King's Solicitors had been elected and served : and no objection had ever been taken. Nay, the Attorney General himself had, in the very last Parliament, *served* ; but then he had been *elected* before he became Attorney General ; and therefore his case was adjudged to be no precedent. Upon the report of the Committee to this effect, a long debate arose which ended in a resolution very creditable to Bacon personally, but singular as a constitutional decision ; namely, that for the present Parliament Bacon should be allowed to remain, but that after this Parliament no Attorney General should serve as a member of the House. The principle, therefore, that the Attorney General was *ex officio* ineligible (grounded of course, or pretended to be grounded, on precedent), was affirmed ; but a special exception was made in favor of the occasion and the man.

This, I say, was a bad omen of the disposition of the House towards the King's business. For it could not be doubted that the absence of any precedent exactly in point was merely an accident ; while on the other hand it was not less plain that the course of precedents, rightly interpreted, was *in favor* of the Attorney's serving, and not against it. For upon what principle could he be excluded, that did not apply with equal force to the Solicitor and the rest of the Learned Counsel ; and indeed to the Secretary of State and all the Privy Councillors ? For they were all of them by their office as much engaged to the Crown as he ? Now the precedents

were in favor of all these serving. Nay, with regard to the Attorney himself, the question had never been raised till the Parliament immediately preceding; and how was it settled then? After being slightly stirred, it was silently dropped, and the Attorney allowed to hold his seat; which certainly seems very like a silent acknowledgment of his *right* to sit. And as for the distinction that was drawn between the two cases, — namely, that the last Attorney had been elected before his appointment, whereas this had been appointed before his election, — as if a member might be Attorney General but an Attorney General might not be a member, — there was clearly no sense in that; the interfering duties and disturbing influences involved in the office being precisely the same in both. Therefore that they were forced by their precedents and by a fear of innovation to take the exception (however it might be pretended for decency and allowed to pass from politeness), no man could really believe. The truth is, that the exception was itself an innovation, — an innovation suggested by a growing jealousy of the influence of the Crown over the deliberations and votes of the Commons; which was the more ominous because nothing had as yet proceeded from the King himself but offers of grace and concession, and assurances of affection and confidence. And though it may seem at first sight that the special exception made in favor of the Attorney on this occasion indicated a more complying disposition towards the King, I am rather inclined to attribute it to a confidential intimation that he had charge of the Bills of Grace, and a fear (for that part of the King's business they were ready enough to advance) that those bills could not be got on so well without him.

But besides the ill omen for the future, there arose out of this one positive and present disadvantage. The question had been raised on Friday, the 8th of April, and



was settled on Monday, the 11th, Bacon being in the mean time sequestered from the House. During the interval the King had made a second speech, in which (following the advice of the "undertakers") he anticipated the demands of the opposition by announcing the favors and graces which he meant to bestow upon them, — not in the way of bargain (he assured them), or as looking for anything in return, but merely out of kindness. To make such a declaration in such a manner that it should produce any good effect, was no easy task for anybody, and particularly difficult for the King, because it was not true, and required great art of words to make it plausible. Something however might have been done by a skillful reporter; and the task of reporting the King's speech to the House should properly have been undertaken by Bacon. In his absence, it was performed by Sir Henry Yelverton, the new solicitor, who did it with unction enough, no doubt; but not (I think) in such a style as to impart to it that air of confidence and serenity and simple munificence without regard to consequences, which was requisite (after what had passed before) to redeem it from the character of an offer in a bargain. In such a matter much would depend upon the spirit in which the message was delivered, and as Bacon knew best what kind of impression the King wished and meant to make, he would have been best able to give effect to his meaning in reporting it. But the report had to be made on the morning of the 11th of April, and the decision of the House upon his own case was not pronounced till the afternoon of the same day. In substance it consisted of an enumeration of the titles of the eleven bills which stand first in the list already mentioned,<sup>1</sup> "bills to be drawn upon the propositions exhibited to his Majesty" — those which were "to be ready if sued for," as well as those to be offered, — with some explanation of their provisions.

<sup>1</sup> See above, p. 4.

The next day Bacon took his seat again in the House, and must have looked about him with some anxiety to see what weather was coming. The prognostics were not encouraging. After a motion against some monopoly, which was referred to the Committee for petitions, we read in the Journals the following note:—

“*Mr. Middleton*,—That the heads of the matters of Grace tend to the gentility, not to cities, boroughs, burgesses or merchants: *offereth a bill concerning Impositions.*”

That could bode no good. What next?

“*Sir Maurice Berkley*,—against Ecclesiastical Courts.” Ending with a motion for a Committee to draw a bill; and followed by Wentworth and Hoskins.

It was clear then that the offer of the Bills of Grace had not stopped the mouths of the discontented. But it was a main point of Sir Henry Neville’s plan of operations that the question of supply should be “proposed betimes and followed close afterward:” and it seems to have been hoped that if it could be pressed to a resolution while the House was still under the first emotion and before they had time to talk, the enchantment would be strong enough to carry it through. As soon therefore as Hoskins sate down Secretary Winwood got up, and after setting forth the miseries of the State for want of money,—the navy in danger of dissolution; the Cautionary Towns for want of pay like to mutiny; Tyrone, encouraged by the disorders in Ireland, treating with the Pope to come over next summer; troubles in Germany; France and Spain upon the point of uniting by a double marriage; England through her poverty exposed in all other parts to contempt and scorn,—and comparing the King’s offered graces to another Magna Charta, concluded by moving for a cheerful and speedy contribution.

The House of Commons was so new a region to Sir Ralph Winwood, that he did not perhaps know how un-

usual a course he was taking. A motion for supply in the first week of the session, in a time of peace, was a thing without precedent; and the first two speeches that were made upon it showed how distasteful it was. The sense of the House was evidently against giving any answer at present. The motion, it was thought, came too early, and should be deferred till the Bills of Grace were brought in. Sir Julius Cæsar added further particulars in illustration of the inconveniences of an empty exchequer; but varied the motion by proposing to refer both matters — the King's wants, and his offers of grace — to a Committee and a sub-Committee. Bacon followed, but ended with still a different motion, that the question of supply be considered in a committee of the whole house.

If nothing had occurred to excite the jealousy of the Commons, it is possible that they would have been content to go into Committee upon the question of supply, under the conditions proposed. But the notes of the debate which followed, though far from indicating a disposition to be illiberal in the matter of money, show plainly that the "animosities and opposition" which Bacon had apprehended from the "brigues and canvasses" of which he had heard, were already eager and active. For upon the first mention of the word "undertaker," the whole House opened upon that scent in full cry, and then arose a confusion of tongues, criminating, recriminating, excusing, deprecating, from which one can only gather that the sore was too tender to be touched even with the healing ointment; and which ended in a resolution to defer the particular consideration of the question (with a general understanding, however, that they were all in favor of a liberal supply) till after Easter — which was still ten days off. And the next day, instead of going into Committee of supply, they appointed a Committee to consider of a message to the King "to intimate the protestation of the House against undertakers." It is clear

therefore that the motion, whoever advised it, was premature, and that the policy of "beginning betimes and following close" was not likely to answer.

The appointment of this Committee, whose deliberations appear to have lasted long, procured a quiet interval in the House; during which the Bill for the naturalization of the Count Palatine was brought in by Bacon and (after an amicable conference with the Lords upon an amendment) read a third time and passed. But though the undertakers were wrong in supposing that they could carry their points if they went fast enough, they were right in apprehending that delay would make difficulties. On Monday, the 18th of April, upon the second reading of "an act concerning taxes and impositions upon merchants," more signs of storm appeared. The notes indicate an animated discussion — animated, though all on one side — and a general disposition (which was the most stormy symptom of all) to have the question of the right of imposing settled before they proceeded with the question of supply. Most of the speakers were amongst the ablest men of the House, and the position they all took was that the question had been settled in the last Parliament, that it was not to be argued any more in the House, only the former arguments to be collected and set forth. The judgment in the Exchequer, though the formal decision of the authorized interpreters of the law, was coolly set aside as "erroneous" — a contrary resolution having passed the last House "by voice"; as if a majority of voices in the House of Commons could overrule the judgment of a court of law upon a question of law. A faint protest at the beginning of the debate against the embodying of such an assumption in an act of Parliament, seems to have had no effect but to bring it out with greater emphasis; and the absence of all traces of further contention in behalf either of the authority of the Bench or of

the right of the Crown, seems to imply that the current of opinion ran too strong that way to be opposed. Bacon — either because of his peculiar position in the House (as a member on sufferance who being retained only for a special service could not properly take a prominent part in other disputes), or because he had changed his opinion upon the legal question, or because he saw that opposition would only irritate the majority and make them violent — was on this occasion silent. So was Yelverton. And though Sir Henry Montagu (who was one of the Learned Counsel) said something, it is impossible to make out from the note in what sense he spoke. The second reading passed without any division, and the bill was ordered to be committed to the whole House the next day fortnight: that was Tuesday, the 3d of May. Two days after, they further resolved that “the consideration of his Majesty’s supply should not be meddled in till Thursday after Easter week, the fifth day of May, and then to be treated of;” and so, after some talking about monopolies and elections, the Bills of Grace having (several of them) been read once but not further proceeded with, and no other business done, they parted on the 20th of April, for their fortnight’s holiday; with but little chance of meeting again in a better temper, the seeds of trouble and dissension having been sown much more plentifully than those of concord and public spirit.

When they reassembled on the 2d of May, Bacon greeted them with four Bills of Grace, and did his best no doubt to make them gracious.

But the next business was the report of the Committee about the undertakers. They had been appointed on the 13th of April, upon the motion of Sir Roger Owen, with instructions “to consider of what course fittest for a message to the King, to intimate the protestation of the House against undertakers, and to let him know, whatsoever shall be done for him shall be merely out of the

love of the whole House to him." The report was now brought up by Sir Roger himself, but it would appear from the notes that little to the purpose had been made out. "Undertaking" — in the sense of packing and managing the Lower House for the King — appears to have been universally condemned, but also universally disclaimed. The doctrine in condemnation of it was carried indeed extravagantly far, for it was condemned as being in violation of an order passed in the last Parliament "that no man but the Speaker might go the King to confer with him about Parliament business" — an order passed just before the dissolution, and the passage of which was one of the immediate causes of the resolution to dissolve — and it was declared "that undertakers, if any, be worse than the Powder-traitors," apparently because while they were equally guilty of conspiring to "blow up" the House, they were doing it in a more subtle and secret way; for the Powder-traitors "would have blown us up with force." No case seems to have been made out, however, against anybody in particular, and the conclusion was only that "the general fame" was "sufficient cause of a message to clear the House."

But the excitement had now risen too high to be satisfied with a simple protestation. If there were (or if it might be that there were) among them persons engaged in a conspiracy against the House more dangerous than the Gunpowder Plot, it was necessary to ascertain who they were, and to give them the opportunity of clearing themselves, or else to clear the House of them. It was proposed therefore to enlarge the powers of the Committee for that purpose. And it is a remarkable fact that though all the speeches of which any note was taken were against this course, the votes went so strongly in favor of it that it was carried without a division.

In this debate Bacon, being a member of the Committee, took a prominent part, and opposed the motion

in a speech which was managed with great skill to meet all objections and to touch with a soothing and healing finger every source of irritation or misunderstanding ; yet it failed to dissuade the House from pursuing the investigation. For the conclusion of the debate is thus recorded in the Journals : —

“ *Ordered*, upon the question, That the former order shall be enlarged, to give power to examine the undertakers ; and the Committee to be of the whole House. Upon Wednesday in the afternoon.”

The whole House, therefore, — with its majority of three new members for every two old, — was to plunge into the business of examining the Undertakers, and so that sore was likely to be more inflamed than ever. How the matter proceeded we do not exactly know, the records in the Journals being imperfect. But the general result was exactly what Bacon apprehended. Ten days after the day appointed for commencing the examination, we find the heats still raging ; aggravated rather than settled or allayed. They had mixed with and irritated almost every debate that took place in the mean time, and had even led to personal quarrels, — nay, to manual scuffles in the House, — when at last they were appeased by the voluntary confession of Sir Henry Neville ; who, upon the production of the paper of advice of which I spoke,<sup>1</sup> came forward with a clear and frank explanation of his own share in the “ Undertaking ; ” which being generally admitted to be unexceptionable, the House was content at length to drop all further dispute on that subject, and go on with the business of the country.

But it was now too late. The inflammation had in the meantime spread on all sides, and so infected all the other businesses in which they were engaged that hardly one of them had now any chance of proceeding smoothly. The most formidable stumbling-block was still the ques-

<sup>1</sup> See *ante*, vol. i., p. 681.

tion of Impositions: a stumbling-block not to be avoided, for the question of the *right* could hardly be passed by in silence now without being virtually abandoned. Ever since that brilliant morning's work of Salisbury's, when on the strength of this disputed right he laid new customs upon several hundred articles not taxed before, it had been impossible to let it sleep. And though the compromise offered by the King — namely, consent to an Act of Parliament limiting his power in future — would (so far as I can see) have been an arrangement sufficiently satisfactory, it seems to have been one to which, for some reason, the Commons would not listen. Upon this question (turning as it necessarily did, not upon the point of policy or convenience, but upon the very power of the prerogative), they had resolved to go into Committee on the Tuesday after the Easter recess — the 3d of May. The proceedings of that day are not recorded; but on the 5th the King sent for them to hear what he had to say on the subject; and, as may be gathered from the allusions to his speech in the debate which immediately followed, — for the speech itself has not been reported, — and as might indeed have been expected, he did not at all mend the matter. Indeed so large a majority of the Commons, including almost all, if not all, the free voices, had now made up their minds on the question, that no one had ventured in the House to express his dissent. They were not likely, therefore, to be converted by a speech from the King, which of course could not be freely answered. The next day they debated the question among themselves, found their unanimity unbroken, and, after some not very orderly dispute as to the manner in which they should proceed, whether by Bill or by Petition or by Conference with the Lords, concluded finally for the last. The Lords were to be moved to confer, and a Committee was in the mean time appointed to prepare for the Conference.



The day on which this was settled was the day fixed before the Easter recess for considering the question of Supply: which was the next order on the paper. An attempt to give it precedence had been overruled. But as soon as the debate on the Impositions was over, a vigorous effort was made to push it through without further delay. "The second point which they fell to consider," writes the Rev. Thomas Lorkin to Sir T. Puckering on the 28th of May, "was subsidies; wherein such as favored the King's necessity were very vehement. And whereas, by his Majesty's own method, they were first to provide for the subject's ease before they entered into consideration of the King's relief, these, inverting the order, would have turned the conclusion into a beginning; and were so confident of their own strength, as they called upon Mr. Speaker to have it put to voices. But the grave speeches of Sir Edwin Sandys, Sir Dudley Digges, Sir Thomas Grantham, and some others, quieted that motion, and drew the House to a resolution to do nothing in matters of that nature till they had ordered somewhat for the good of the public." The notes of the debate given in the Journals confirm this report substantially; and show very distinctly that the objection was to the time and not to the thing. Those who spoke strongest against the motion were careful to declare their intention to vote a subsidy when the proper time should come. Sir Edwin Sandys put his opposition expressly on the ground that such a vote ought to be carried without a negative voice; and wished that "every man's demonstration of his purpose to supply his Majesty in due time" might be made known to him. And though the House would not consent to send a formal intimation even of their general intention, it was agreed that "the honorable persons about the Chair might, as voluntary of themselves, inform the King that generally all that had spoken (which were many) had *undâ voce*

agreed in their thoughts and speeches to relieve his Majesty."

In this attempt to get "his Majesty's business" driven through at the very beginning of the session, Bacon does not appear to have taken any part. It was not according to his ideas of true policy; and was noticed by him afterwards as a mistake on the part of the "Undertakers," — "a stumble at the threshold," — an unlucky move, which had the effect of betraying the very thing which it was meant to conceal, — their weakness in the House. And certainly the temper of the House, as it may be gathered from the notes of that debate, seemed to justify his opinion that if left to themselves they would not forget their duty in that respect.

But though the ground upon which a present vote of supply was resisted by the more temperate members was its contrariety to the ancient custom of Parliament, and the dishonor it would be to the King if the vote should not pass with general unanimity, — as it clearly would not, if pressed to the question then, — and though there is no reason to doubt the sincerity of their profession that they would vote liberally when the proper time came, yet it is clear enough, from the tone of that day's debates, that when the time did come the chance of unanimity would be small, unless in the mean time they received some better satisfaction concerning the Impositions. And it was this apprehension, no doubt, which made the Undertakers so anxious to get the supply voted first. For upon the question of Impositions they were themselves on the popular side; they knew that the King was not prepared to make such concessions as they themselves considered satisfactory; and their own credit was very low in the world just now, the Committee of the whole House which had been appointed to examine them having only just begun their work. Meanwhile the Committee appointed to prepare for the

conference with the Lords concerning Impositions wasted no time. Their first meeting was on the 6th; on the 12th they were ready with their report; which was brought up by Sir Edwin Sandys in a very able and elaborate speech. They had got together all the records; thoroughly examined the subject; were more sensible than ever of the magnitude of the grievance; more confident than ever that the Crown had no legal right to levy Impositions without consent of Parliament. They conceived that the King had been misinformed; and proposed, as the true way of disabusing him, first to induce the Upper House to join in a petition for removal of the burden; then to present the joint petition to the King, together with a remonstrance of their right; "that so, this eased, they might with better judgment and with alacrity proceed to the King's supply, the first end of this Parliament."

This was the end proposed. By way of preparation, the subject was formally laid out in nine divisions; and each division, after the excellent practice of those times, was assigned to a separate speaker or speakers. With the distribution of the argument (which is not wanted for explanation or illustration of anything that comes within the scope of this work) we need not trouble ourselves. The question, of immense importance then, has been long settled beyond the reach of dispute, and taken its place among the curiosities of history. That it was then a question fairly debatable is all we need now bear in mind; and of this there is evidence enough in the fact that six or seven years before it had been decided one way after formal hearing by the authorized interpreters of the law, and was now for the second time decided the opposite way by a House of Commons very strong in lawyers, and almost unanimous. The only part of the distribution which much concerns us is that which was assigned to Bacon. But that is remarkable enough to be worth quoting *in extenso*.

“Nine heads, nine burthens upon several persons.

“I. An introduction, briefly declaring the matter in fact and state of the question. — Direction to him in three things, wherein we conceive the King to have by misinformation done other than any of his ancestors.

“1. The time: for now by letters patents and in print these impositions set for him and his heirs for ever; which never done before; which strange; because no Proclamation bindeth longer than the King's life; so could not impose but during his own life.

“2. Multitude of impositions. Queen Mary, Gascoigne wines and cloths: Queen Eliz. added only one, of sweet wines. From Ed. III. to Queen M. none. In Ed. III. Ed. II. Ed. I., but five in all. — That upon a petition last Parliament divers hundredths of these taken away; so now not remaining above 300 or 400; yet that those remaining far more worth than all the rest abolished.

“3. The claim: for none of his ancestors ever did so, but pretended wars, needs, etc. Prayed continuance but for a time. — This committed to Mr. Attorney.”

Now when we consider the peculiar position in which Bacon stood towards the House and towards this particular question, — holding an office which had but a few weeks before been voted incompatible with the duties of a member of Parliament as binding the holder to the King's side, and having only four years before put himself forward personally as an earnest and uncompromising maintainer of the King's right on grounds of law, — their selection of him for a part like this must be regarded as a remarkable proof of personal confidence. The task of opening and laying the groundwork of an argument which was to make good a conclusion in the teeth of the King's most notorious prejudices, was to be entrusted to the King's Attorney General. The officer whose official relation to the King was thought to imply subservience incompatible with the duties of a member, was to explain to the Lords that the King had in this

matter of Impositions assumed powers which none of his progenitors had assumed, both in time, in number, and in circumstance; that whereas no former King had set any Impositions but for a time limited, he had set them "for him and his heirs for ever:" whereas no former King had set more than two or three, he had set more than as many hundreds; whereas no former King had set them but upon pretense of war or need, he had set them when there was no such pretense.

The matter, it is true, was a very delicate one to manage. The successful result of the conference would depend very much upon the temper and spirit in which it was opened, upon the tact and persuasive speech of the opener, and the personal favor with which the audience were prepared to look upon him and listen to him. In all these respects Bacon was no doubt the man for the work. The House knew by often-repeated experience in whose hands such a business had the best chance prospering. But the same skill which enables a man to guide a cause right which he wishes to succeed will enable him to guide wrong a cause which he wishes to fail. Now they knew that not long ago he had believed them to be wrong in point of law: and whether they were right or wrong, such a petition as they wanted to persuade the Lords to join in was certain to bring them into disagreeable collision with the King; whose most recent declaration on the subject was regarded as discouraging. How was it that they could trust him with such an office? Upon the point of law, indeed, it is possible that he had changed his opinion. When the question first fell under debate, the records (upon the evidence of which the argument chiefly turned) had been imperfectly examined; and one distinguished lawyer who had formerly been a conspicuous speaker on behalf of the King's right to impose, had professed himself a convert upon the sight of precedents which had been

disinterred by the Committee appointed to search. Now we happen to know that *shortly after the last Parliament* "certain records concerning Impositions" were delivered to Bacon, and that he made private notes upon some of them. What these records were indeed (further than that their bearing upon the case was thought important), or what the tenor of his notes was (further than that they were private, and that he wished to keep them so), we do not know. But it is possible that they had had upon his opinion the same effect which others had formerly had upon Hackwill's. And if that were so, he was all the better qualified for the task now laid upon him. His own conversion would give additional weight to his authority, and point him out as specially fitted to set forth the reasons for reconsidering a conclusion which he had himself formerly concurred in, but had since discovered to rest on imperfect information. As for collision with the King, it was an evil both for himself and the country which he must have wished extremely to avoid. But he probably felt that it could not be avoided now except by the King's yielding ground; which he would be more likely to do if he saw the House unanimous than if there were symptoms of divided opinions among the leaders. Whether or not he now thought the King's claim good in law, he must have been fully satisfied by this time that it could not be maintained in fact. Right or wrong, the question was clearly carried against the King. To have it carried in such a manner that the collision should not be violent or visible, was the best that could be hoped now. We have seen that he thought the question admitted of "accommodation;"<sup>1</sup> and we shall see hereafter in what particular way he thought it might be managed, so as to involve a virtual abandonment of the King's claim and yet to make it

<sup>1</sup> Letters to the King. "Wherein I meet with the obligation of Impositions, but yet I conceive it may be accommodate." *Ante*, vol. i., p. 680.

seem his own voluntary act, induced by public considerations, and having no reference to the question upon which the difference had arisen. Judging from the general tenor of his policy, I have little doubt that he was preparing at this time to work towards some such end; this being one of those struggles between Prerogative and Privilege in which it was of vital importance to avoid a definite and declared victory on either side.

If so, his readiness to take the part assigned, whatever his private opinion may have been on the point of law, is sufficiently accounted for: he could not have served the King better. And on the other hand, if he was willing to undertake and desirous to succeed in it, his appearance at the head of a Committee of Conference would give them countenance and strength. If the House could trust him, nothing was more natural than that they should employ him. That in a business so delicate and difficult, so distasteful to the higher powers, and so easy to make miscarry, they should have felt they *could* trust him, was to his credit and to theirs. But it is evident they did.

They proceeded warily; and to make more sure of their ground, and prevent the danger of being confounded by the production on the sudden of some new unexpected precedent, they took the precaution, before agreeing upon their message to the Lords, of inviting all dissentients to make known their objections. At the debate in which this motion was made, Bacon was present and spoke. But though he raised some questions and desired further inquiry as to certain of the positions which it was proposed that he should himself maintain, it is clear from the notes of his speech that he did not mean to raise again the question of the King's right, but was willing in a general way to accept the part assigned to him.

It was spoken on the 16th of May. But it was not till the 21st that they were ready to send their message

of invitation to the Lords ; not till the 26th that they received the answer. So there was much deliberation on both sides.

The answer was a refusal.

“Their Lordships, having entered into a grave and serious consideration as well of the matter itself as of divers incident and necessary circumstances, did not think it convenient to enter into any conference of that cause concerning the point of Impositions at that time.”

Such a refusal was a very unusual measure. The Commons, it is true, had within recent memory refused to confer with the Lords about the amount of a subsidy : but that was because they took taxation to be the particular function of the Lower House. No such reason could be pretended by the Lords in this case. In such a question as the legal right of putting impositions upon merchandise, a joint petition from the two Houses was the orderly and constitutional way of proceeding ; to which a Conference was a necessary preliminary. In assenting to it they did not bind themselves to assent to the prayer of the proposed petition : in refusing it, they refused not merely to acquiesce in the conclusion, but to entertain the question. The truth, I take it, was, that those of the Councillors and courtiers who had been in treaty with the “Undertakers,” meaning to use them for their own purposes, or (in the Earl of Suffolk’s own phrase) to “play the knave with them,” had found that the game was not going in their favor, and resolved to break it up. And unfortunately the means were ready at hand. Up to this time the absorbing importance of this question of Impositions had occupied the Lower House, and the gravity of the persons who had been trusted with the management of it had kept down all disorderly tendencies. But the elements of disorder were there, and a word or two was enough to put them in commotion. The answer from the Lords found the



Commons in a state of excitement unfavorable to judicious resolutions. Rumor with some of her tongues had anticipated the messengers, and reported that words had been spoken during the discussion in derogation of the Lower House. I have already had occasion to remark more than once that the guardians of liberty had not yet learned to tolerate freedom of speech any better than the champions of prerogative. They could demand it for themselves, and strongly resent all interference with the exercise of it on their own side. But the freedom which they demanded was freedom to speak that which they thought good, and forbid to be spoken that which they thought not good. To words calculated to injure a cause which they wished to prosper, they were not prepared to accord any indulgence which they knew how to prevent. In this case the first proceedings of the Lords had been temperate and judicious. Upon the motion of the Lords Chancellor, they had resolved themselves into a Committee of the whole House for the purpose of taking the message of the Commons into consideration ; and having first agreed upon the general purport of their answer (which was to be "that they would meet them of the Lower House, and hear what they would deliver unto them), they had proceeded to consider the question of time and place, which the Commons had left to their choice. It was important that they should go prepared for discussion : and by way of preparation it was moved by the Lord Chancellor and carried upon a division, that before they proceeded to the further consideration of their answer, they should hear the opinions of the Judges ("who had been required and were then present to assist that Court") touching the point of Impositions. The Judges, however, though summoned to be "assistants to the Lords to inform them of the Common Law," saw objections to the delivery of an opinion upon this question ; and speaking by the mouth of Coke, desired

“for many weighty and important reasons which his Lordship delivered with great gravity and eloquence” to be forborne; “concluding that himself and his brethren were upon particulars in judicial course to speak and judge between the King’s majesty and his people, and likewise between his Highness’ subjects; and in no case to be disputants on any side.” How they were “to be assistants to the Lords to inform them of the Common Law” if they were never to deliver an opinion upon a question in dispute, is not explained. But the function of the Judges was in a state of transition; and in this case the inconveniences were obvious which an extrajudicial declaration might involve. Their excuse accordingly was allowed, and the Lords had to make preparation for the argument without their help. But the silence of Coke was probably, to those who knew him, significant enough. It told them that in defending the King’s right to impose without the consent of Parliament they could not count upon his support, and made them wish to avoid the contest. Now the resolution they had come to in favor of the Conference was only in Committee; and though it was a Committee of the whole House, the House itself was not bound by it. The question “whether they should meet” had to be put again, and, being put, the non-contents carried it.

This was on the 24th of May; and I suppose it was in the course of that day’s debate that the words were uttered, the rumor of which was agitating the Lower House when the answer from the Upper was at length delivered. Rumor had said that one of the Bishops had urged the Lords not to consent to the Conference, alleging that the question was one with which the Commons had no right to meddle; that they were striking at the Crown, and would probably utter matter of mutiny and sedition not fit for the Lords to hear. Upon this ensued a long, violent, distracted, and disorderly debate as to

the steps to be taken for righting the intolerable wrong. Whether to complain to the Lords, or to go at once to the King, or to rise and refuse to sit again till they were satisfied, were the questions which occupied them all day; ending, however, in the moderate resolution to refer the question to a select Committee. The select Committee, by a majority of twenty-one to eighteen, recommended that they should go for redress, not to the Lords, but to the King. And it was while Sir Roger Owen was defending this recommendation against the grave and weighty objections urged against it by Sir E. Sandys, that the answer from the Lords arrived. There was nothing in the form of the answer to interfere with the effect of Sandys's argument, which seems to have convinced all parties; and the resolution with which the discussion concluded was to send a message on the subject to the Lords and to forbear proceeding in all other business until they had their answer. A select Committee was appointed accordingly to prepare the message; and after some discussion in the House upon the report (in the course of which the assailants of the Bishop's character were only silenced by a suggestion that if they punished him so much in that way, it would be thought punishment enough for the offense), all requisite preparations had been made; — when a fresh interruption was caused by the announcement of a letter received that morning by the Speaker from the King.

It was about their resolution of the day before. He wanted to know what they meant by "forbearance of proceeding in all other business," and whether it belonged to him or to them to put an end to the Session. This raised a new commotion. What did the King know about the terms of their resolutions? Who had told him? There must be somebody about the King who misinforms him. Let there be a Committee of the whole House to inquire into the matter, and let everybody be

called upon to clear himself. "The King has not been misinformed," said Sir Thomas Lake, assistant-secretary: "he saw the order itself." "The King hath been oft misinformed," said Mr. Bulstrode. "It is certain that there has been misinformation," said Sir Walter Chute, carver of the King's meat. "There were those that were unfriendly to the calling of this Parliament. I doubt they still cast bones in." "I have been a Parliament-man," said Sir Samuel Sandys, "these thirty years; and more bones have been cast in this Parliament to divert the good proceedings of the House, than in all the Parliaments that I have known. If the King saw the order, it must have been because he desired to see it upon some former misinformation." The conclusion of the debate, of the temper of which these are fair samples, was to go into Committee of the whole House the same afternoon, for two purposes; 1st, to consider of an answer to the King's letter; and 2dly, to take into consideration all misinformations made to his Majesty:

The first was dealt with first, and passed without difficulty. The form of answer was quickly agreed upon, and the King was ready to receive it. His reply to the deputation which presented it appears from the notes to have been in a very good temper. Approving of their desire to clear themselves of such an imputation as had been cast upon them, he reminded them that other matters more necessary remained to be done: hoped that they would be careful to do nothing which might give occasion to such scandals: complimented them upon their diligence in searching out precedents, and only hinted at what might happen if he were to follow the example, and look into the precedents of what Kings had done; finally called their attention to the height of the sun, as admonishing them to take into consideration without further delay the great and important businesses of the King and kingdom.

Up to this time they had postponed the consideration of Supply upon the legitimate ground that commonwealth measures ought to have precedence, and in the avowed expectation that when the proper time came it would pass, as it ought to do, without opposition. Of these commonwealth measures they had put the most important foremost, and were proceeding in a regular and constitutional way towards the settlement of it, when they were stopped by the refusal of the other House to join with them in the usual method of deliberation. Until that impediment were in some way disposed of, they might fairly have refused to deal with the question of supply; and if they had taken their stand upon that, it would have been difficult to dislodge them from their position. So their case stood up to the 24th of May. But on that day the House seems to have lost its head. On that day they descended from their unassailable position; joined issue upon a quarrel which would have been a foolish one even if they had been in the right, and in which they were utterly in the wrong; and laid themselves open to a just imputation of stopping all the business of the country until this quarrel were settled to their own satisfaction. It is vain to pretend that it was the question of Impositions which stopped the way. What they had been demanding since the 24th of May was not an audience for the case against the King's right to lay impositions upon merchandise, or for other means of prosecuting that question, but the punishment of a member of the other House for words said to have been spoken in the course of debate among themselves. Some member of the Lower House had heard — or seen somebody who said that he had heard, or been told by somebody (for it is impossible to say exactly upon which degree of rumor they were proceeding) that somebody had heard — words spoken in the Upper House in censure of their proceedings and in derogation of their character for

loyalty. From that time forth the one business of the country was to be the punishment of the person who had spoken those words. It was not enough to obtain a disavowal of them, or a declaration that they had not been used in the sense in which they had been understood. It was not enough to receive an assurance from the other House that if they had conceived the words to be spoken in the sense which report had put upon them they would not have allowed them to pass without censure and punishment. All this had been freely and fully accorded. Their demand was that the speaker should be punished, without any "if"; and not only punished but punished with a severity proportionate to the offense in the opinion of the offended party. His offense was against the Commons. Till he had been punished to the satisfaction of the Commons, other business was to stop.

Such being the attitude which they had maintained since the 24th of May and were still maintaining on the 1st of June with wilder vehemence than ever, it is not surprising to find that on the 3d they were interrupted by a message from the King, warning them that unless they proceeded forthwith to treat of his Supply, he would dissolve the Parliament on the following Thursday. More surprising it is to find that they were not prepared for such a message. Yet it is plain that they were not: for the consternation it produced has left legible traces in the notes of the debate. Upon the receipt of it, the leaders of the popular party all at once dropped the Bishop, began to talk about Impositions again, and tried to get back to where they were before he crossed their path. Some were even for taking the question of Supply into consideration at once; and Wentworth, who used to be always loudest and foremost in opposition, was foremost that day to recommend measures of conciliation, — deprecated extreme proceedings on either side; admitted that the King had a right, as then advised, to

be tender in the matter of Impositions; and concluded with a motion to "present him with some proportion of Supply presently." The majority, however, were not prepared to go so far on the sudden; the general current of the debate threatened the re-opening of the whole dispute; and all they could conclude upon was, a Committee of the whole House to prepare an answer to the King's message.

For the solution of a difficulty which required prudent considering and delicate handling, a Committee of the whole House was as unfit an instrument as could have been devised. But it was not put to the proof. The last debate took place on Friday: the House was to go into Committee the same afternoon. But I suppose the temper of the speeches had given warning that the further stirring of such a question in such an assembly would do more harm than good. On Saturday the Speaker was ill, and the House did not sit; on Monday they were informed by the King that Parliament would be dissolved the next day (which was two days earlier than the time previously indicated) "unless they should before that time perform what was by his former letters required." And on Tuesday it was dissolved by commission accordingly.

Such is the history of this dissolution as it may be gathered from the Journals. But if we may trust the report of two contemporary news-writers, both generally well-informed and writing independently, — Chamberlain and Lorkin, — it would seem that, besides the obvious causes of the breach, arising from the old struggle between Privilege and Prerogative (in which the refusal of supplies on one side and the power of dissolution on the other were the weapons constitutionally provided), there were others at work in secret. Both these reporters speak of a "plot" or conspiracy to bring about, not the victory of either, but the defeat of

both: a conspiracy to *prevent* a peaceable issue, by some party whose object was simply to make the Parliament a failure. It is not easy upon the first view to see why anybody should have wished for that result. That there should have been persons who, when it was a question whether a Parliament should be called, thought the experiment unlikely to succeed and therefore wished that it should not be tried, is intelligible enough. But when it was too late to prevent the *trial* of a Parliament, it is hard to understand how any one belonging to the Court party could have wished it to end without voting supplies. Other means of replenishing the Exchequer had been tried in vain; and to wish this to fail was to wish the King to be still in straits for money; which could not be the interest of those who fed upon his bounty. But the complaint repeated so frequently in the Journals, and from so many sides, of the "casting in of bones," and of "popishly-affected persons" seeking to keep them in broils, prove that the existence of such a party was believed in at the time, and points to the quarter whence it was supposed to spring. The Earl of Northampton was no doubt the "popishly-affected" person supposed to be at the head of the conspiracy — Sir Charles Cornwallis and little Dr. Sharpe being his instruments. He was known to have been against calling this Parliament, and he treated the dissolution of it, almost openly, as a personal victory; making a kind of triumphal entry into London from Greenwich immediately after, with a great attendance of gentlemen on horseback, and "with only Sir Charles Cornwallis in his coach;" a thing "much noted," says Chamberlain, "in the manner and the time." What use he proposed to make of his victory we cannot tell, for he died the next week. But I suppose he thought that the hope of relief through Parliament withheld the King from arbitrary measures, to which, if he could be made desperate of remedy from that quarter, he



would be the more easily induced to resort. To the advice of councillors who were aiming secretly at this end, his natural irritation at the offensive language used in the Lower House laid him open : and the resolution to shorten the time allowed to the Commons for re-consideration (for which it would be difficult to invent any plausible justification in policy) was probably taken suddenly in a fit of angry impatience under their influence ; Suffolk and Somerset (now that they found what was the end of "playing the knave" with the Undertakers) having very likely joined with Northampton.

The silence of Bacon during all these later debates (for after the 16th of May, when he accepted his part in the proposed conference about Impositions, his name occurs in the Journals only twice, and that only as forming one of the select committee on the Bishop's case ; nor is he mentioned by any contemporary newsman as having had anything to do with them) is to be accounted for, probably, by his sense of the peculiar condition upon which he held his place. His office having been decided to be a disqualification for the duties of a member, he could hardly obtrude his advice where it was not asked and where he could not hope that it would be acceptable. But that the dissolution was in any way owing to his action or advice, is an assumption entirely gratuitous, and in my opinion improbable in the highest degree. It is at variance with all the external and collateral evidence ; which imputes the frustration to a set of persons both in the House and out of it, — in the House as actors, out of the House as instigators, — with whom he had neither sympathy nor influence ; with whom in fact he had nothing to do. It is at variance also with everything we know of his wishes, hopes, fears, proceedings, and policy. Such an upset was in his opinion not merely a thing to be avoided, but of all possible issues the very worst that could happen. That the King

should "once part with his Parliament with love and reverence," was in his opinion a thing "inestimable for his safety and service."<sup>1</sup> The parting in this case was with mutual irritation and sense of wrong, upon terms mortifying to both, and not calculated to make either think better or kindlier of the other. It was satisfactory to those only who wished to see Parliamentary government brought into discredit. How far Bacon was from being one of them has appeared clearly enough already, and will appear more clearly still hereafter.

<sup>1</sup> See *ante*, vol. i., p. 679.

## CHAPTER II.

A. D. 1614-1615. *ÆTAT.* 54-55.

WHEN both parties in a dispute lose their temper it is not likely that either of them will conduct it wisely. Though we do not know precisely what the provocation was upon which the King determined to send that peremptory message, we can hardly doubt that he would have done more wisely to refrain, at least until the contumacy of the House had expressed itself in some act for which the House as a body was more distinctly responsible than it could ever be for the speeches of individual members. As a body, the Lower House had involved itself in a very foolish quarrel, but it does not appear that it had yet passed any act or resolution to which just objection could be taken by the Crown. With regard to the Bishop, they had appointed a committee to consider what further should be done, and that committee had not concluded its deliberations. With regard to Impositions, they had appointed a sub-committee to argue the question in conference with the Lords, but the argument had not come off. With regard to the King's last message, the answer was still under consideration. With regard to supplies, they had delayed but they had not refused them.

Whoever considers the nature and issues of those constitutional disputes, will excuse a good deal of warmth and vivacity on both sides. So uncertain as the consequences were of making the Crown absolutely dependent upon a vote of the Lower House for the means of carry-

ing on the government, the King might well be excused for hesitating to throw away a source of revenue which the authorized interpreters of the law had hitherto declared to belong by law to him. So indefinite as the power was which the undisputed command of that source of revenue would have put into the King's hands, the Commons might well be excused for fighting hard to establish a check upon it. In proportion to the importance of the controversy was the passion with which on either side it was conducted. On both sides this passion bred intemperance. The King was ill-advised in attempting to enforce a vote of supply by a threat of dissolution, and afterwards in committing some of the members to prison for speeches in the House which he was not obliged to know anything about; and for burning the notes which had been prepared by those who had had parts assigned them in the Committee of Conference. But he was a man whom nature had made at once extremely affectionate and extremely irritable; and though he had tried hard to be patient, yet when he found that the House was occupying itself in personal invectives against the men he loved — most of them the friends and favorites of his youth, for he never cast a friend off — his patience failed him and he did a foolish thing. The Commons, on their side, were men too; and did their best to countenance and justify him in both these acts. By insisting on the punishment of the Bishop of Lincoln for what they considered slander of themselves, they deprived themselves of all right to maintain that speeches in the House, being offensive to persons out of the House, were exempt from punishment at the instance of the offended party. And by suspending all consideration, both of the question of Impositions and the question of Supply, to make room first for the pursuit of such a quarrel as that, and then for intrusion into matters in which they had no constitutional right to interfere, they deprived

themselves of all right to complain of the dissolution as interrupting them in the discharge of their proper duty. Their excuse is of the same kind as the King's excuse. They were angry because they could not get what they wanted ; and they did foolish things.

But however the blame may be apportioned, the issue was not satisfactory to anybody except the enemies of Parliaments. To part without any reform accomplished or grievance redressed, was a disappointment to the popular party. To part without granting supplies was no satisfaction to them. It was not what they intended or what they wished. Those of them who were statesmen, and there were good statesmen among their leaders, could well understand both the evils and the dangers of an empty Exchequer ; and though History may be content with pronouncing her censures and so pass on to the next case without asking more questions, the men of the time could not forget that censures remove no difficulties, and that the next question was, what the government was to do ? They saw the state so deep in debt (already more than half a million, which was more than a whole year's ordinary revenue, and still rapidly increasing) that it could not even borrow except at extravagant interest ; Government security being the worst in the land. They saw the natural and constitutional remedy by Parliament twice tried in vain ; each time leaving the case worse than it was before ; and for the present at least, all hope of relief from that quarter cut off ; for though the last failure may have arisen from mismanagement, and might perhaps have been avoided, it was not the less past mending. The other sources of relief which remained available were not such as it was desirable to drive the King upon, either for his own sake or the people's. By straining the prerogative hard, something might no doubt be made of monopolies, of penal laws, of feudal tenures, of fines for disobeying proclamations, of raising rents, of

new impositions, and the like ; but such remedies, though they might a little relieve the present symptoms, would but hurry on a more fatal disease. Something might possibly be done by a wealthy marriage for the Prince ; but that must be with Spain, and the thought of such a thing was hateful to the people as a compromise with Antichrist. Something might be done by selling Crown property ; but not without beggaring the inheritance of the Crown. Something also (and it was the least objectionable remedy) by the sale of titular honors ; but not without depriving such honors of all their real value. What else ?

Had the failure of the Parliament been the King's fault alone, he might perhaps have partly recovered his position by recanting his error. But it is too evident that it was not so. It is too evident that the House of Commons could no longer be trusted either for understanding or for acting upon the true interests of the kingdom, even according to the most popular construction of them. The virtuous and consistent and patriotic members, such as Sir Edwin Sandys, were no longer masters of the House. It had shown itself capable of becoming a factious assembly, "careless how the world went," and its movements could no longer be answered for by anybody.

Then again, putting aside the case of the King in his personal capacity, and of the Crown in its relation to the Commons, in what condition did this dissolution leave the people themselves ? Abroad, there was Spain, with the Pope to back her, ready to invade on the first opportunity. What case so inviting to an invader, as that of a nation whose Government can raise no money ? Ireland, with both Spain and the Pope at her back, was always ready to rebel : what better opportunity for rebellion ? The Dutch would gladly beat the English merchants out of the markets of the world : how were they

to be protected against foul play? The pirates of Algiers and Tunis were plundering them as they passed: how were they to be protected against robbery? At home, though there was no great evil pressing nor any great danger threatening, time was working changes as usual: new cases were arising which Government required new powers to meet; proclamations being but a voice, which could not be enforced without sanction of a previous law. Whatever good therefore was designed for the nation in that long array of bills prepared by the Government for the last Parliament, or in any others which the popular party designed to bring in, all that good was at a stand.

To call another Parliament immediately would have been a hazardous experiment,—as likely to do harm as good. But there was one way left by which those who regretted the state of things which had thus been brought about might help to rectify it. It can hardly be doubted that many Englishmen, both in and out of Parliament, were sorry that the representatives of the people had been forced to part without imposing a tax for the benefit of the King. As many as were of that mind might offer the King their own share of such a tax, of their own free will. The law which forbade any man to be taxed without the consent of his representatives, could not be construed as forbidding each man to tax himself. Those who thought it right so to tax themselves, would naturally think it right for others, similarly circumstanced, to do the same, and might endeavor to persuade them to do it. While the King on his part, though forbidden to *exact* any such contribution without consent of Parliament, was not forbidden to *receive* one which (with or without that consent) was freely offered. If therefore a party of noblemen and gentlemen, knowing what had passed, weighing the consequences of it, and concluding (as they might well do) that such a notorious beggary of the Exchequer, together with such a notorious breach be-

tween the Executive and the Legislature, was dangerous to the best interests of the kingdom; that it had been brought about by no just or rational course of proceeding, but by accidents and blunders and faction; and that it was such a conclusion as every wise and honest man in the kingdom must, if he understood the nature and consequences of it, regret; — if such a party agreed, first to make a subscription among themselves, and then to get up a subscription through the country, for the relief of the Exchequer, and for a better proof that the King, however he might have broken with the Parliament, had not lost the affections of the people; taking at the same time all practicable precautions to make people understand that it was really and truly a free gift, — that any man might give or not give as he pleased, and that while those who gave would be thanked, those who did not give would pass unnoticed and unchallenged; no just objection could be taken to the proceeding.

The business was begun by the Bishops in convocation, and so far I suppose no one will maintain that the proceeding was unconstitutional: for the offer thus made by the members of the *Convocation* (with whom the legal power of taxing the clergy lay) may be considered only as an irregular way of doing what they had a right to do, and would no doubt have done in the regular way if they had had the opportunity. And if individual members of the laity chose to follow the example of the Bishops, why not? “The Archbishop of Canterbury” (says Chamberlain) “began with a basin and ewer, and redeemed it with £140. The Bishop of Winchester as much, Ely £120, et sic de cæteris. The noblemen followed the example. The Lord Chamberlain and the Earl of Somerset gave each £200; the Earl of Salisbury, £300; the rest less; Mr. Secretary gave £100; and all officers towards the law or receipt, according to their minds; Sir Henry Fanshawe, £50; Sir Christopher



Hatton, as much ; the Lord Coke, £200 ; but the rest of the Judges come but slowly after : for I know where some presented but £20, which was refused. The money is paid into the Jewel House."

What Bacon gave I do not find mentioned, nor do I know whether up to this point he had had anything to do with the business. But the next step was a critical one ; and his opinion was either asked or offered as to the course which should be followed. "Letters," Chamberlain adds, "shall be sent into all the shires to see how they will follow the example." Now it is obvious that though the Bishops, Lords, Judges, and Courtiers, in giving what they pleased, used no more than their lawful liberty to dispose of that which was their own, methods might be used to induce the shires to follow their example which would be far from lawful ; and that the constitutionality of the further proceeding depended entirely upon the effect of the letters that were to be sent out. The object of Bacon's advice was to guard against this danger by avoiding everything that had any show of compulsion or authority, leaving the agitation of the movement entirely in the hands of individuals, allowing every man to make his own gift in his own way, without any notice taken of such as gave nothing ; and particularly taking care that there should be "no letters from his Majesty, or the body of the Council, or the Lieutenants, concerning the same." If the last precaution was neglected, therefore, it was not his fault. Not being himself a member of the Council, he could not control their resolutions ; and it appears that in some things they took a course contrary to this advice. There is reason to believe that their first design was to make the collection by Commission under the Great Seal, which was objected to by Coke (now a Privy Councillor) not only as impolitic (in which Bacon would have agreed with him) but as illegal — in which he differed : and though Coke re-

tracted that opinion afterwards, it prevailed at the time, and prevented the adoption of that course. The course chosen, however, was scarcely more in accordance with Bacon's suggestions: for the motion was made by letters *from the Council* to the Sheriffs, Justices of the Peace, and Mayors. And here we may leave the business for the present, as we shall have to return to it afterwards.

The angry parting between the King and Parliament, with the grave differences which led to it, though not followed by any measures of violence or severity, could not but bear some fruits of disorder. In the heat of the agitation against ecclesiastical grievances, a Puritan clergyman named Peacham had made some charges against his proper Bishop — the Bishop of Bath and Wells — for which he was brought to answer before the High Commission. His house being searched for evidence, several loose papers were discovered there, not bearing upon the immediate question, but containing charges against the King and the great officers of State. Along with these, was a sermon in which all those charges were collected and set forth, with text and prayer prefixed, as if ready to be preached: the whole forming a violent invective against the iniquities of the government; coupled, it would seem, with warnings (whether imprecatory or deprecatory I do not know) of judgment to come, in the shape of sudden death to the King, massacre of his officers, or risings of his people; and implying an acquaintance with proceedings of State which it was supposed he could not have known of without the help of some one in a higher position. What the offense would have seemed to amount to in our eyes, it is impossible to say: for no sample of the composition has been preserved, and the only description we have of it is from the pen of the King himself, who cannot be taken for an impartial witness. What we know, is that these papers, being laid before the Privy Council, were

by them judged to contain treasonable matter; and that Peacham, who was already in durance waiting the sentence of the High Commission, was thereupon committed to the Tower.

For the libel upon the Bishop he was shortly after by sentence of the Court deprived of his orders. For the libel upon the King, which was thought to be a more dangerous matter as affairs then stood, he was now to be called in question. In his first examination, which was taken before the Archbishop of Canterbury and the other members of the Privy Council in the usual way — at what exact date I have not ascertained — he seems to have admitted that the papers were in his own handwriting. But that was not thought enough. They were supposed to import a conspiracy for the purpose of exciting popular discontent; and the first object was to find out what other person or persons were concerned in it. Upon this point they could get no light from him; and imputing his silence to obstinacy (for which they may perhaps have had some reasonable ground, though we are not told what it was), they determined, — whether upon their own suggestion or by the King's command, does not appear, — to put in force a power which, though it had been rarely used since James came to the throne, was still believed by everybody to be a power residing in the Crown by virtue of its prerogative. On the 18th of January, 1614-1615, they issued the following warrant:

“After our hearty commendations: Whereas Edmund Peacham, now prisoner in the Tower, stands charged with the writing of a book or pamphlet containing matter treasonable (as is conceived), and being examined thereupon refuseth to declare the truth in those points whereof he hath been interrogated: Forasmuch as the same doth concern his Majesty's sacred person and government, and doth highly concern the service to have many things yet discovered touching the said book and the author thereof, wherein Peacham dealeth not so clearly as becometh an

honest and loyal subject: These shall be therefore in his Majesty's name to will and require you and every of you to repair with what convenient diligence you may unto the Tower, and there to call before you the said Peacham, and to examine him strictly upon such interrogatories concerning the said book as you shall think fit and necessary for the manifestation of truth, and if you find him obstinate and perverse and not otherwise willing or ready to tell the truth, then to put him to the manacles, as in your discretion you shall see occasion. For which this shall be to you and every of you sufficient warrant."

Up to this time there is no reason to suppose that Bacon had had anything whatever to do with the case, directly or indirectly. Whatever questions therefore may be raised as to the legality of this warrant, they cannot in any way touch him. For though he was one of the persons to whom it was directed, he was not a party to the issuing of it. The persons who are responsible for issuing it were the Archbishop of Canterbury, the Earl of Suffolk (now Lord Treasurer), the Duke of Lenox (Lord Steward), the Earl of Worcester (Lord Privy Seal), Lord Stanhope, Sir Ralph Winwood (principal Secretary of State), Sir Fulke Greville (Chancellor of the Exchequer), and Sir Julius Cæsar (Master of the Rolls). And on their behalf it is enough to say that had any question been raised as to their authority to issue it, the clerk of the Council could have settled it at once by producing a series of warrants extending through the whole of the three preceding reigns, and probably much further back, which proved beyond dispute, that during all that time it was an ordinary thing for the Council to authorize and direct the examination with torture of persons suspected of state-offenses; and that the directions had always been given and acted upon without any symptom of misgiving as to their legality.

Had the warrant been directed to the Learned Counsel alone, or in conjunction with officers of inferior rank,—as

the similar warrant for the torturing of Philip May was, in April, 1603, where Coke was the chief examiner, — Bacon would have been answerable, though not for the order, yet for the manner in which it was executed. But this was not the case. The warrant was directed to Sir Ralph Winwood and Sir Julius Cæsar, who had themselves as Privy Councillors signed it, together with the Attorney and Solicitor General, the two King's Serjeants (Montagu and Crew), the Lieutenant of the Tower, and the Clerk of the Council; that is, to the two Privy Councillors, with the Learned Counsel and the officials to assist them. In a commission so composed it was not possible for Bacon to control the proceedings, and therefore it would be unreasonable to hold him answerable for them. The report was drawn up by Winwood, by whom, as the man of highest official rank present, and one very confident of his own abilities, the proceedings were no doubt ordered and the examination conducted. And the concluding paragraph ("Upon these interrogatories Peacham this day was examined before torture, in torture, between tortures, and after torture. Notwithstanding, nothing could be drawn from him, he still persisting in his obstinate and insensible denials, and former answers") is in his handwriting. After which follow the names of the eight commissioners, Bacon standing third.

Bacon's signature of this report proves that he was present and allowed it to be accurate. Of the part he took in the examination, all we know is that he was "not the principal examiner." I cannot find anything written, or reported to have been spoken by him, which would lead me to suppose that he either advised or approved the course that was followed, or expected any good from it. The use of torture, "in the highest cases of treason, for discovery" — that is, for the purpose of discovering accomplices or the like — he believed to be legal. An obstinate refusal to declare that which a man has no right

to conceal he looked upon as a grave offense, less deserving of compassion perhaps than any other : and where he thought that the obstinacy could be overcome by being made painful, I can imagine him thinking it not only legal, but right, to apply the pain. But that he thought Peacham's case one in which such a process could be employed successfully, seems to me improbable. In that case the thing suspected was not definite enough, the grounds of suspicion were too vague and uncertain, the means of evasion were too many, to allow of the examinee being driven into a position in which he must choose between disclosing the secret and suffering the pain. Winwood, being more familiar with the French than the English procedure in such cases, might think it the best way. But Bacon had had too much experience of the working of the system in England not to foresee that no good would come of it in a case like this ; for that the prisoner would only give such answers or make such confessions as might lead to delay ; knowing that if it came to the worst he could retract everything that made against him, on the plea that it had been extorted by pain or fear ; so that if the case were allowed to rest upon his confessions, it would break down when it came into Court. The precaution which he took to guard against this we shall see hereafter.

In the mean time he addressed himself with great zeal to the preparation of the case against Peacham for the Judges and Jury. Whether this part of the proceeding had been advised by him or not, I do not know. But it had been resolved by the authorities to indict Peacham for treason ; and in those anxious times, when so many doubtful questions were newly stirred, and the Crown was engaged in a struggle so critical, so full of immediate embarrassment, and upon the brink of issues so hazardous, it was of more than usual importance that it should be strengthened with the full authority of the law.

Peacham's transgression was on the popular side. An ineffectual attempt to punish it, especially if frustrated by the opposition of the Judges, would have been not only what was then considered a dishonor to the King, but a substantial damage to the royal authority. It would have been regarded by the opposite party as a victory. It was better to pass the offense by than attempt to punish it at the risk of a defeat; just as at this day no prudent government would prosecute a popular offender, however heinous, before a jury predetermined to acquit him. The doubt was not about the fact, but about the law; and it was important, before proceeding further, to know what the Judges were likely to say to it. The Council had already resolved to deliver a copy of Peacham's book to the Judges of every bench as soon as they arrived in London and to consider what should be done next, when they had heard their resolution.

In this there was nothing unusual — nothing which anybody at that time would have dreamed of objecting to. In spite of some sweeping assertions to the contrary, it may be stated roundly that for the law officers of the Crown to consult with the Judges beforehand in doubtful cases about to be tried, was at that time the ordinary course of proceeding; — was so then and continued to be so long after. But in the course which the King proposed to pursue on this occasion there was one novelty which caused some trouble at the time, and though the history of it is quite simple, the motive quite intelligible, and the end (so far as I can see) quite innocent, has suffered extraordinary misinterpretation since. The King was himself persuaded that the case for the prosecution was good in law: but he wished to be sure that the Judges would take the same view of the case which he did. What he wanted, if we may judge of his intentions by his actions, was not to control their opinions, but to know what they were. Experience, however, had taught him that it was

not an easy thing to obtain the opinions of the other Judges when Coke was among them, who so overcrowded them by the weight of his reputation, the overwhelming resources of his legal erudition, his mastery in law-logic, whereby he could turn the edge of the law which way he pleased, and above all, by sheer strength of will, that they had no opinions of their own; and James, being by this time no contemptible lawyer himself, and knowing very well that Coke, however overwhelming, was far from infallible, had a mind to know what the others would think when they had no prompter. With this view he gave direction that the case in law should be submitted to each of the Judges of the King's Bench, severally. Each was to be asked his personal opinion whether a specified offense amounted to treason. There was to be no attempt to deceive, or overbear, or otherwise deal unfairly with his judgment. The grounds of the indictment, with the records and precedents upon which it was justified, were to be laid before him, and his opinion was to be asked whether such an indictment would be good and sufficient in law, — whether, in short, it was a case fit to go into Court with. No time was limited for the answer. No form of answer was prescribed. The only thing insisted on was that each should answer for himself, without consulting the others, the same question which, had they been assembled in conference, would have been entertained and answered by them all as a matter of course. If a majority of them, so consulted, had answered no, the prosecution (I imagine) would have been dropped.

Now, unless the Judges had a right to be treated as a *party* in the State with a collective conscience, I do not clearly see upon what ground they should object to be so consulted. They could not say that they were individually incompetent to form an opinion on such a question without taking advice in common; for that was the very



thing they had to do in the ordinary discharge of their duties. Peacham's offense had been in Somersetshire. In ordinary course, he would be tried at Taunton before the two Judges who rode the Western Circuit. Those Judges would have to explain the law to the Jury without waiting to consult their fellows. If they did not shrink from the responsibility of declaring their opinion in Court, when it would be a judicial decision and direction carrying life and death, why should they shrink from the responsibility of declaring it to the King, when it would be merely an opinion given for his information, and would determine nothing except whether the trial should proceed or not?

That by answering the King's question they would commit themselves to an opinion formed upon an *ex parte* statement, *might* indeed have been justly urged as a reason for objecting to answer, — if they were themselves to try the case.<sup>1</sup> But that objection would have applied to an opinion given by the *assembled* Judges quite as strongly as to one given by each of them separately. And it was not the objection which was really taken; being indeed a discovery of later date, which had not yet occurred to anybody — not even to Coke himself, who was always too ready to give his opinion upon cases which he was himself to try, before they had been half heard; and whose objection in this case to the “auricular” taking of opinions had nothing to do with it. That the “auricular” proceeding, if it had become a regular practice, would have tended to weaken the authority of the Judges as a body, by depriving them of the strength derived from united action and apparent

<sup>1</sup> The Judges by whom Peacham was to be tried were not (as Mr. Gardiner has pointed out) among those whose opinion was in this case required. But that was probably an accident. If he had been tried in the King's Bench I have no reason to think that a different course would have been taken. The Judges of the King's Bench were consulted as the highest authority upon criminal law.

unanimity of opinion, and would have thereby retarded the process by which they were gradually becoming independent of the Crown, is not to be denied; and as it is natural for all bodies to struggle after their own independence, it was natural that the Judges, and especially Coke, should dislike it. But the King also had his independence to look after; and if he suspected a combination of the Judges to clip his wings, it was natural that he too should use what powers he had left to break it. By taking the opinion of each separately, he could at least prevent any one among them from dictating the opinions of the rest, and at a time when he certainly had the right to remove any one of them at pleasure from his office, it would be difficult to maintain that he had not the right to ask for his opinion upon a point of law. That an extra-judicial consultation of the kind with the assembled Judges was not, in those days, considered by any of them at all out of the common way, we have conclusive evidence in a case of treason which was proceeding at the same time. While Peacham's case was still pending, the four Judges of the King's Bench met the members of the King's learned counsel in Coke's chambers, heard the charge and the proofs, and desired that the examinations and papers should be left with them for a while to be considered; Coke making no objection at all, but offering an opinion of his own upon that case at once, and when the conference was over, promising that his private opinion upon the case of Peacham should be ready very soon.

A few days after, he delivered it in writing. What the terms were, we do not know. But we know that the conditions under which the opinion was obtained did not interfere with its liberty, for it amounted in effect to a denial of one of Bacon's cardinal positions. To make Peacham's offense treason, it was necessary to hold that one of the means by which "the King's death is com-

passed or imagined" is the "disabling of his regiment, and making him appear to be incapable or indign to reign." And the opinion which Coke then delivered, as we learn from Bacon himself in another place, "amounted in effect to this — that no words of scandal or defamation, importing that the King was utterly unworthy to govern, were treason, except they disabled his title." With modern ideas, it is not easy to see the value of the distinction; because words only — that is, the mere expression of an opinion — seem to us insufficient in either case to make treason. With the ideas of Bacon's time, it must have been equally difficult, because words tending to excite popular disaffection to the person and government of the King were quite as dangerous to the Crown as words disabling his title. Nevertheless, as most of the former treasons had been connected with the claims of some rival and pretender to the Crown, it may be easily supposed that there were few or no cases in the books in which the disabling of the title did not form part of the charge, and was not held to have been proved; and Coke's opinion would stand upon the precedents. However this may be, his answer, whether right or wrong, deprived the Government (in the court of popular opinion) of the support of the King's Bench, and brought on the danger which Bacon apprehended when he said to the King "except these stay in the ship, ye cannot be safe." To proceed no further with the case under that disadvantage would probably have been his advice, if it had not proceeded so far already. But after the King had pressed it on so eagerly and allowed it to take so much wind (for the general result of all the examinations and consultations was well enough known abroad), it was as dangerous to stop as to go on. To drop the prosecution at this point would certainly have been a great encouragement to the disaffected party, for it would have immediately gone abroad that people might indulge

themselves in the *composition* of libels against the State without any risk.

The decision (whoever was responsible for it) was to go on, the opinion of Coke notwithstanding. On the 24th of February, directions were given that Peacham should be sent into Somersetshire for trial at the Western Assizes. But the next day (though "Sir Randall Crew, the King's Sergeant, and Sir Henry Yelverton, Solicitor, were ready to go to horse to have waited on him there," the order was countermanded. In hope of procuring delay, he had made a new statement, implicating Sir John Sydenham, brother-in-law of his neighbor and patron Mr. Paulet; which was thought to require investigation. Both Sydenham and Paulet were sent for, and the Bishop of Bath and Wells — his own Bishop, and the object of the libel which first brought him under the notice of the High Commission — was appointed to examine him again. "On Sunday," says Chamberlain, — Sunday was the 26th, — "he was at the Court confronted with Sir John Sydenham about certain speeches heretofore passed between them, and Mr. Paulet and some of his men are sent for upon the like occasion. But for ought I learn there is no likelihood of danger, no more than there was towards Sir Maurice Berkeley and a minister or two of that country, that were likewise called in question, and have reasonably acquitted themselves, the matter falling out to be of small moment." Bacon seems to have had no hope of good from this proceeding — believing the new story to be merely a device for delay, which could lead to nothing except the discovery that it was false. Neither does he seem to have had any part in the examination himself, or even to have been present at it; for in reporting to the King the result and the further measures which it had rendered necessary, he speaks only of what he has learned from the Bishop. The principal measure which he considered

necessary was another examination, to be taken by himself and his fellows of the Learned Counsel alone (in which therefore he could have the management of it in his own hands) in order to remove confusions and ambiguities, and clear the indictment of matter depending upon confessions which might be retracted and disavowed as extorted by fear of pain: and with that view to make him believe that the trial was coming on immediately and that it would be his last opportunity of speaking. I do not suppose that since the unsuccessful experiment of the 19th of January, the "manacles" (whatever the nature of that torture may have been) had been either applied or threatened, for we hear nothing of them. But for Bacon's purpose in this examination it is clear that the prisoner must have been relieved from all apprehension of them. What he said was to be said in such a manner that he could not disavow it in Court, or it would be of no use; and if he could have pleaded fear of torture as his motive in saying it, it would not have been held admissible as evidence. The final examination of Peacham took place on the 10th of March, and this is the last we hear of the case as far as Bacon was concerned with it. It was now, I imagine, too late to try it at the Western Assizes during the present circuit. It had to wait for the next. The result we learn from Chamberlain. Writing to Carleton on the 13th of July, 1615, he says:—

"Peacham, the minister, that hath been this twelvemonth in the Tower, is sent down to be tried for treason in Somersetshire before the Lord Chief Baron and Sir Henry Montagu the Recorder. Sir Randal Crew and Sir Harry Yelverton, the King's Sergeant and Solicitor, are sent down to prosecute the trial. If the fellow have the grace to submit himself, I think he shall have no great harm, otherwise he must take his adventure."

And again on the 24th of August,—

"Peacham, the minister, after a year's imprisonment in the

Tower, was arraigned the 7th of this month at the assizes in Somersetshire, before the Lord Chief Baron and Sir Henry Montagu. Sir Randal Crew and Sir Henry Yelverton were sent down to prosecute the business. Seven knights were taken from the Bench to be of the Jury. He defended himself very simply, but obstinately and doggedly enough; but his offense was so foul and scandalous that he was condemned of High Treason; yet not executed, nor perhaps shall be, if he have the grace to submit himself and show some remorse."

On the 31st of August another attempt was made to obtain from him a confession of the truth, at which he seems to have owned himself the author of the writings imputed to him, but denied any intention to publish or preach them. Whether the Government believed this, or whether it was merely out of respect for the opinion of the dissentient Judges, the verdict and sentence pronounced against him were thought sufficient for example; and though not pardoned or liberated, he was allowed to live otherwise unmolested till he died about seven months after.<sup>1</sup> It was a case which might have been expected (considering that Coke was understood to be against the prosecution) to excite a good deal of popular sympathy at the time. But I do not find traces of any. Peacham's contemporaries seem to have seen nothing interesting in him. Whatever his deservings may have been, his name owes all its favor with posterity to the discovery, about a hundred years since, of the name of Bacon among eight witnesses to his examination under torture.

In suggesting precautions to be observed in collecting the "Benevolence," so as to make it a really "voluntary oblation," Bacon had added a recommendation that "however no manner of compulsory means was to be used, nor no show thereof, yet if any malicious person should deride, or scorn, or slander the frank disposition

<sup>1</sup> "Peacham, the condemned minister, is dead in the jail at Taunton, where they say he left behind him a most wicked and desperate writing, worse than that he was convicted for." Chamberlain to Carleton, 27 March, 1616.

of the King's subjects, or purposely dissuade it, or seek to defeat it or divert it, that he be questioned and severely punished." In consequence of the neglect of one of the main precautions (that no letters should be sent about it from the body of the Council) — a case occurred exactly answering this description.

The benevolence money having come in slowly and scantily in answer to the first letters from the Council, and the movements of Spinola in Germany (which seemed to threaten the Palatinate) having supplied them with a fresh and popular argument in favor of contribution — for without money how could the Government take such a part in the impending quarrel as became the greatness of England? — a second circular was sent to the Sheriffs towards the end of September, urging greater speed in making the collection and sending in the proceeds. Upon the receipt of these letters, meetings were appointed by the Justices of Peace to be held in the several towns, for the purpose of taking the subject into consideration: and among the rest in Marlborough, a principal town of Wiltshire, which was governed by a Mayor. The Mayor (feeling apparently the want of counsel and assistance) applied to Oliver St. John, as a man of good family and a person of importance in the place. St. John forbore to give any answer in private, but the next day, when the Justices were to meet, sent a letter to the Mayor, with authority to lay it before them if he thought fit.

Not content with arguing that the proceeding was contrary to *Magna Charta*, in which the writer might be merely stating his own reason for refusing to give anything himself, he proceeded to declare in express terms that the King was *ipso facto* guilty of perjury, the highest offense against God; that for such acts Richard II. lost his crown; and that every subject who should lend his help would be accessory to the King's sin and in

danger of excommunication. Such a declaration in a case between one subject and another involving money, would even at this day be called an actionable offense. What it must have seemed in those days to those against whom it was committed, we may best conceive by imagining a like imputation cast upon the House of Commons, and calling to mind the cases of Dr. Cowell and the two Bishops. And certainly if any attempt was to be made for the preservation of reasonable decorum and the common forms of respect in the demeanor of the subject to the sovereign, and if there was any court in the land legally authorized to take notice of gross breaches of the same, I do not myself see how such a case as this could have been properly passed over, and accordingly it was brought before the Star Chamber. That the object of the proceeding was not to punish the man but to make an impression upon opinion by a judicial sentence accompanied with authoritative declaration, may be gathered from the conclusion of Bacon's speech, which is evidently intended to prepare for the submission which followed. A fine of £5,000, with imprisonment during the King's pleasure, would have been a heavy punishment if it had been exacted to the uttermost; but the penalties of the Star Chamber in James's time were seldom enforced against delinquents who acknowledged their fault. Upon a full acknowledgment and submission made in the Star Chamber in June, he was set at liberty without being called on to pay the fine; which was afterwards formally remitted, and the whole record of his sentence at his own petition cancelled.

This was the end of the only trouble which the benevolence brought upon the government. The amount of the collection, though it probably fell short of the expectations of the movers, and very far short of what was wanted, was nevertheless no inconsiderable relief to an empty exchequer. Forty or fifty thousand pounds, though



not enough, was not to be despised. It helped the present, and I do not find that it made the future more difficult. But the difficulty, though not aggravated, was still there. The benevolence may be said to have supplied means of meeting the extraordinary charges for about a year. But as it could not be repeated, the old question recurred: How was the next year to be provided for? and before the end of the vacation that question was once more formally referred to the Council.

The length of time which passed after the dissolution of the last Parliament before another was called, coupled with the shifts to which the Government was driven in the mean time for raising money, has given rise to an impression that it was the deliberate intention and policy of the King to dispense with Parliaments altogether, and try to carry on the government without. But though to those who look only at the surface of events without observing their causes there may seem to be some color for this opinion, we have conclusive evidence that it was not so. If there was any time when James might be fairly suspected of a determination to dispense with Parliaments, it was immediately after the unfortunate issue of the last; for the conciliation of which he had gone, as he thought, so far in concessions. Yet within less than sixteen months we find him seriously engaged with his Council in consultations and preparations for calling another.

Of course I do not impute this to any romantic desire on his part to put limitations upon his own authority. The same financial embarrassment which made Parliaments so difficult to deal with obliged him to face the difficulty. He did not see any hope of effectual remedy by any other means; and though he disliked the necessity he was prepared to submit to it. The fact is not altogether new; for Mr. Gardiner has duly recorded it, though I cannot think that in his view of James's pro-

ceedings and policy he has taken it duly into account. But I am fortunate in being able to supply some fresh evidence on the subject which is both new and material.

With whom the resolution originated, — whether with James himself, or with his Privy Council, or with some private adviser, — does not clearly appear. But it was, if not suggested, at any rate very strongly supported, by Bacon, in a memorial or letter of advice which he addressed to the King about this time. If we knew the exact date of it we should be able to judge whether it was this memorial which induced the King to refer the matter to his Council, or whether the knowledge that it had been referred to the Council induced Bacon to write the memorial. I incline myself to the first supposition, because I think he could hardly have entered so fully and carefully into the whole question without some allusion to the deliberations of the Council, if he had known that they were going on. The point is not, however, of much importance; for whatever the occasion may have been, the paper itself contains an elaborate discussion of the expediency of calling another Parliament and the measures to be taken by way of preparation, submitted by him privately to the King, and to be taken therefore as representing his own personal opinion. A manuscript copy of it, in a handwriting of the time, or not much later, had found its way into the Library of the Inner Temple, where it remains. And it is a singular and significant fact that, though entered in the printed catalogue under Bacon's name, with the title (not quite correct indeed, but not on that account the less inviting to curiosity) of "Sir Francis Bacon on Parliaments," no notice has been taken of its contents, so far as I know, by anybody.<sup>1</sup> It is true that the name does not appear

<sup>1</sup> Since this was written, Mr. Gardiner has mentioned it as a valuable paper. *Prince Charles and the Spanish Marriage*, vol. i., p. 67, note.

upon the face of the transcript (which seems to be the work of a copyist) ; but on the outside leaf is written, in the hand of the transcriber, "Concerning a Parliamt," and underneath, in another hand, "Sir Francis Bacon ;" and the internal evidence is as conclusive as to the authorship as internal evidence can possibly be.

If the advice contained in this memorial was volunteered by Bacon before the King had said or done anything in the matter, it required some courage to offer it ; for another experiment like the last, with like results, could hardly fail to ruin the credit of the adviser in the King's eyes. But the case being the same as it was, only stronger, the remedy to be applied was the same, only more needed ; and Bacon's advice the same, only bolder and fuller and more earnest, and carried more carefully into detail. If any one imagines that the course actually taken with the last Parliament was according to his advice, he may satisfy himself that it was not so, by observing that in recommending that a course "just contrary" should be taken with the next, he repeats in all its main features, and with no more variation than was required by the altered conditions of the time, the whole of his former counsel ; recommending the same attitude of independence and indifference on the King's part with regard to supplies ; the same abstinence from everything that should have the appearance of bargaining and setting out concessions for sale ; the same kind of causes to be given out as the occasion of calling the Parliament ; the same kind of preparations for meeting it ; the same avoidance of all meddling and interference with either elections or deliberations ; the same disposition of spirit and temper to meet possible disappointment with dignity and composure, and insure a gracious and respectful parting in any event. The particular subjects which he wishes to be submitted to the consideration of Parliament are also in perfect keeping with his former advice

and with the policy which he had always recommended. They were to be the increase of trade and the security and greatness of the kingdom. The separate memorial in which he proposes to give the details has not survived ; but it is pretty clear that he would have made the first a means of disposing of the question of Impositions — the Government and the people dropping and forgetting the point on which they differed in order to pursue together an object in which they agreed ; and that he would have used the last to get rid in like manner of the jealousies which had made the Lower House so close-handed of late years, by engaging them in an enterprise after their own heart, for which the late occurrences abroad supplied a fresh opportunity. I have noticed more than once Bacon's idea that a bolder attitude in foreign affairs would be politic, if only as a diversion of domestic discontents. Now the death of so great a man as Henry IV., who, though a professed convert to the Church of Rome, continued to be in his political capacity the great ally and leader of Protestantism, was enough to unsettle the balance of power in Europe ; and in the disturbances by which it was followed the zealous Protestantism of England would have been proud to see the country play a part. It is probable that a well-declared resolution at that time on the part of England to stand on jealous watch against any increase of the Spanish power would not only have kept that power within its banks, but converted English Puritanism and Anti-popery into zealous supporters of the Government. And now they saw France threatening to throw her weight into the wrong scale. Instead of acting as the great counterpoise to Spain and Austria, as she had done under Henry IV., she appeared to be uniting with them. News came that the young King was going to marry Anne of Austria, while his sister Elizabeth was going to marry the Infant of Spain ; a conjunction very alarming to Protestantism,

the importance of which, as well as the use that might be made of it, was well enough understood by James; as we know by the terms in which he directed his ambassador to remonstrate. A pamphlet printed in 1615, entitled, "News out of France concerning the Marriages," etc., contains a translation of the speech addressed by the English ambassador to the King and Queen Mother in June of that year; from which the following sentences are extracted: —

"His Majesty hath been advertised that your M. is resolved speedily to take your journey and to make an exchange of Princes with Spain. . . . Now France diverting itself from him by the precipitation of these marriages with Spain shall leave unto him alone the burden and charge all such affairs and differences as yet remain in Christendom undecided. However his M. is not ignorant of the advantage which elsewhere is offered unto him by this alienation, *if he were a Prince ambitious to win unto himself alone the goodwill and friendship of all those ancient allies which by this action seem abandoned,*" etc.

Bacon, I fancy, would have had him yield to the ambition and improve the advantage. And though speculations upon what would have been the issue in times past of counsels that were not followed are even more doubtful than predictions of what will be the issue of the counsels of to-day (only that the error is safe from detection), it can hardly be questioned that if the opportunity had been judiciously used, the issue would have been very different from what it was. So great a change in the *direction* of popular feeling, when it was as yet only beginning to feel its strength, could hardly have failed to alter the course of events both at home and abroad. I can even conceive that it might have saved Europe her thirty years' war and England her great Rebellion.

Had a Parliament been elected under a general impression that the business in hand was to arm in defense

of the religious liberties of Europe, we are well warranted by the issue of similar experiments, both before and after, in concluding that the Lower House would have been liberal of subsidies. And if at the same time the particular points in dispute between the Commons and the Crown could have been quietly removed out of the way, and the King could have been persuaded to consent to some arrangement which would put it out of his power to indulge his taste in future for that thoughtless liberality in giving which was the origin of those illiberal anxieties about getting that lost him so much majesty in the eyes of his subjects,—and if he could have acted his part well enough (for the assumption of an air of confidence and indifference at such a time would have required good acting),—the experiment, though bold, would have been far from hopeless.

But there were two difficulties in the way,—one of which I think Bacon cannot have been fully aware of. If to prepare against danger to religion from the intermarriages between France and Spain was to be the business of the session, the rumor of a marriage to be arranged between our own Prince of Wales and the Infanta would be a very intractable item in the programme. How Bacon proposed to treat it, we have seen; and one would like to know whether when he submitted that suggestion to the King he was aware of the state of the negotiation. If he did not know that such a proposal was under consideration (which is possible, for it was conducted with careful secrecy) we could only infer that he would not himself have advised the King to entertain it seriously. But if he knew that it had taken the shape of a series of formal articles, proposed by the King of Spain and accepted by the King of England as a basis for negotiation (which was the state of things at the end of June, 1615), we must suppose that he meant to interpose a very bold and emphatic warning against it.

As an officer of the government who was not a Councilor, he could hardly have represented to the King more distinctly the inconvenience of the policy which he was meditating than by recommending him to let the prospect of it be held out *in terrorem* to his Parliament, as a thing so hateful that they would be the readier to take away the motive to it — which was the financial embarrassment. That in his private opinion the Spanish match would be a very impolitic measure is clear upon either supposition.

The other difficulty was the want of harmony in the King's own household, which threatened discord in action. There were factions at Court, both political and personal. But I imagine that the divisions which Bacon referred to were chiefly political: as between the supporters of the French alliance on one side and the Spanish on the other; each interested in discrediting their rivals, and therefore in thwarting whatever measures they favored. Unless provision could be made against this contingency, it would be better to let the thing alone; and James resolved, before committing himself further, to ascertain how his Councillors were disposed. And a report, lately disinterred, of the consultation which followed, explains the position in which he and his Councillors of State stood towards the Legislature. None of them thought that the government could be carried on satisfactorily without the help of Parliament. All of them felt that to call in the help of Parliament without first removing the causes of quarrel and misunderstanding would be worse than useless. But they all hoped (more or less confidently) that with proper preparations a reconciliation might be effected, and all agreed in a general way as to the kind of preparations to be made. The King approved the course they recommended, and directed them to set about it at once. And the next day they arranged the several committees, so that each sev-

eral head of inquiry might be entered upon in earnest at the beginning of the next week.

What would have come of it must be left to conjecture. The business was interrupted by a great accident, which threw other work upon the hands of the Government and made the time altogether unfit for the trial of such an experiment: as we shall see in the next chapter.



### CHAPTER III.

A. D. 1615-1616. ÆTAT. 55-56.

Two years before the time at which we have now arrived, Sir Thomas Overbury, Somerset's great friend and adviser, died in the Tower, to which he had been committed for contempt. In the summer of 1615 a report reached Winwood that there was reason for suspecting that he died by violence. This report he mentioned casually to the Earl of Shrewsbury as a blot upon the reputation of Sir Gervase Hellwysse, who was lieutenant of the Tower at the time. Hellwysse, hearing of it from the Earl, volunteered a statement to Winwood, in which he admitted that there had indeed been a *design* to poison Overbury by the hands of Richard Weston, the under keeper; but asserted that he had himself detected, dissuaded, and taken measures to prevent, though he had not revealed it. This Winwood reported to the King, who immediately gave orders that Hellwysse should be required to set down his declaration in writing. In the declaration which he drew up in obedience to this command, Hellwysse admitted not only that he had himself discovered the intention of Weston to poison Overbury, but that he had since heard from Weston that Overbury was really murdered, and that it was done with a clyster administered afterwards by an apothecary's boy who had been bribed. The only actor in the business that he knew of, besides Weston, was (he said) one Mrs. Turner; who, as soon as she heard that the case was likely to be inquired into, had sent

Weston to sound him and find out how much he knew, and what part he was likely to take. But he admitted that, though he had "set down the truth," it was "peradventure not the whole truth;" and as it seems that in his first communication to Winwood he had excused his own silence as proceeding from his fear of "impeaching or accusing great persons," the words were understood as an intimation that the Somersets were in some way implicated.<sup>1</sup>

This declaration was dated the 10th of September. On reading it, the King, who does not appear to have heard of the rumor before, referred the matter to "some Councillors," with directions to inquire in the first place whether there was any ground for such an imputation upon the Somersets; and if they found it to be a groundless calumny, then who was the author of it. The case proved on inquiry to be so grave that it was thought expedient to put it into the hands of Coke, as the man most practiced in such investigations and the highest officer of justice; who appears to have entered on the work on the 27th, — the day before the meeting of the Council upon the Parliament question. Examinations were taken by him daily during the next week; and though the matter was still dark, the evidence began to tell so strongly against the Somersets that he thought it prudent to strengthen himself with the help of persons of higher rank than his own. For this purpose he went himself to Royston to speak with the King; who, upon his representation of the state of the case, joined in commission with him the Lord Chancellor, the Duke of Lenox, and Lord Zouch. The date of their commission is not positively known; but I have little doubt that Mr. Gardiner is right in inferring that it was delivered to Coke in person at Royston on the evening of Friday the

<sup>1</sup> Overbury had opposed the project of obtaining the divorce with a view to the marriage.

13th of October. The first meeting of the Commissioners was on the 15th. On the 19th, Somerset (who had in the mean time been to Royston and back), finding that he could not prevent the inquiry from going on, took a step which tended to increase the suspicion against him. Being still at large, and still holding the seals of his office, he sent a pursuivant, accompanied by a constable and a locksmith, to the house of Weston's son, with a warrant "to search for bonds and writings concerning Mrs. Hynde;" under pretense of which, "divers writings concerning Mrs. Turner" were seized and carried away. The Commissioners, seeing that Mrs. Turner was at the time the King's prisoner on a charge which was under investigation by the King's Commission, considered this so great a contempt that they at once ordered both Somerset and the Countess to keep their several chambers, and see nobody except their own necessary servants. And when they found that, in spite of this, the very next morning Somerset had endeavored to get a message conveyed to Mrs. Turner, they committed him to close custody under the charge of Sir Oliver St. John. All which having reported to the King on the 18th, they received a message from him the next day signifying approval of their proceedings, and encouraging them to prosecute the business.

So far the inquiry had been conducted with zeal, diligence, and discretion by all parties. The King had entrusted it to Commissioners unexceptionable in character and position, and given them full liberty of action. The Commissioners in dealing with it had followed the order prescribed by law, which required that the principal should be convicted before the accessory were tried, and regarded as principal not the man who contrives and procures, but the man who executes the deed. And though the evidence implicated the Somersets only as accessories, there can be no doubt that it fully justified

the Commissioners in placing them under restraint in the mean time, that they might be forthcoming, if the principals were found guilty, to answer for their own part in the transaction.

But the next proceeding, in which Coke acted on his own judgment without consulting the other members of the Commission, was not so judicious. The case against Weston, who was accused of actually administering the poison, was now supposed to be complete, and on the 19th of October he was brought up for trial. In order that the trial might proceed according to law, it was necessary that he should "put himself upon his country." This he refused to do. In that case (strange to say) the law had then only one weapon by which it could enforce its own authority. It could order him to be put under physical pressure till he either consented or died. The nature of which alternative — the *peine forte et dure* — having been carefully explained to him, the trial was adjourned for four days in hope that he would think better of it. So far well. But there was a large audience that day in Court, including "some of the nobility and many gentlemen of great quality," who had gathered to hear the news, and would be much disappointed if they were sent empty away. For their benefit the Judges thought meet (I use Coke's own words) "to have openly and at large read the confessions of the said Richard Weston, and the testimonies of others, as well concerning the fact of the said Richard Weston as the Earl and Countess of Somerset, and Mrs. Turner; without sparing any of them, or omitting anything material against them." This was required (Coke said) by "the necessity and course of the evidence," because "it appeared thereby that the said Richard Weston was procured and wagered by some of them." A strange reason for a strange proceeding! For if the story could not be told without what amounted to a declaration from the Bench of the

guilt of parties who had not yet been so much as accused, it would surely have been better to leave it untold. All that the audience needed to know was why the trial did not go on; and for that it would have been enough to say that according to law a prisoner who refused to put himself upon his country could not be tried, and Weston refused to put himself upon his country. But Coke had not yet arrived at the great principle which he was destined to discover before he died; and whether it were that he wished to commit the King irrevocably to the prosecution of Somerset, or only that he could not hold in his secret any longer, he certainly did think it right on that occasion for the Judges of the King's Bench "to deliver their opinion beforehand of a criminal case which was to come before them judicially," — an opinion not private but conspicuously public, — and of a case in which they had not yet heard one word of what the accused persons had to say in explanation or defense. It is true that the story was told not by Coke himself, but by Sir Lawrence Hyde, the Queen's Attorney, who conducted the prosecution: but being told by direction and in presence of the Judges, it could not have been mistaken by the public for anything less than the declaration of the Court. And when Weston was persuaded at last to plead, and brought up again for trial on the 23d of October, it had to be told over again.

Before the trial commenced (into the details of which I need not enter, as Bacon had nothing to do with it) Weston expressed a hope that they were not making a net to catch the little fishes and let the great ones break through: words which seemed to imply a charge against others guiltier than himself. Coupled with the extraordinary revelations which had been made in Court, they naturally caused a great deal of curiosity and excitement, and the friends both of Overbury and of Somerset were impatient to hear the interpretation. On the morning of

the 25th, the day appointed for his execution, a distinguished company assembled at Tyburn to hear his last words; and when it appeared that he was going to die without making any further disclosure, the following scene occurred, as described the next day by one who had a principal part in it.

“At the execution of Richard Weston there were present together Sir John Hollis, Sir Thomas Vavasor, Sir John Wentworth, Mr. Sackvill, Sir John Ayres, Sir William Mounson, Sir Henry Vane, and others: and many of them spake together, and asked Weston whether he had poisoned Sir Thomas Overbury or not? Whereupon this examine asked Weston whether he poisoned Sir Thomas Overbury or no? Who answered that he had left his mind behind with the Lord Chief Justice: and remembereth that upon his question to Weston, Sir John Wentworth said, ‘Sir John, it is nobly said, — ask him again:’ but this examine, seeing advantage taken of his words, held his peace.”

This examine was Sir John Lidcot, brother-in-law of Overbury, who appears to have asked the question in the expectation that Weston would confirm the story that had been told, and so satisfy the world. Sir John Wentworth, on the other hand, was an ally of Somerset’s, and urged him to repeat the question in the hope that he would repudiate it. On both sides the curiosity was natural enough, as we see to this day that whenever a man is convicted of murder with mystery there is always an intense curiosity to obtain a confession from him before he dies; but when a man had been by due process of law found guilty and was about to suffer the penalty, to ask him publicly whether he was guilty or not was an affront to justice which could not be permitted or passed over. Several of the parties were committed to prison, and it was resolved to bring two of them — Sir John Wentworth and Sir John Hollis — before the Star Chamber: and along with them one Thomas Lumsden, who,

though not present on this occasion, had been guilty of a kindred offense in sending the King an account of the first day's proceedings in Weston's case, which being referred to Coke was pronounced "false and malicious." It was Bacon's duty to prepare the information against them : and it appears to have been the first proceeding connected with the Overbury trials in which he had to take any part, either private or public. But before the case came on, another important step had been taken.

When the King first heard of the adjournment of Weston's trial, he wanted him to be confronted in the interval with the Countess and with Mrs. Turner, and, if needful, with the Earl himself. This, if it could have been done, would probably have cleared up several points which remain to this day doubtful. But Coke told him that "a reëxamination or confronting, after a public conviction of the party delinquent, was not such as had been used in the course of his laws." And it was not till the 25th of October, after Weston's execution, that Somerset was examined. The result of his examination that afternoon, and again on the 28th, was a report, signed by all the Commissioners, that there was "vehement suspicion, and that the matter upon consideration of the examinations and testimonies was pregnant against him for being accessory to the poisoning of Sir Thomas Overbury before the fact done ;" and that it was "necessary that he should be committed to the Tower : " and on the 2d of November he was deprived of the seals and staff of office, and committed to the Tower accordingly. On the 7th Mrs. Turner was tried as an accessory, found guilty, and sentenced to be hanged ; though the sentence had not yet been carried out, when on the 10th Bacon had to appear in the Star Chamber and deliver his charge against the gentlemen who had questioned Weston on the scaffold.

This was all that Bacon had to do with the trials of

the commoners implicated in the murder of Overbury; which took place in Guildhall, and were entirely managed by Coke in every stage from examination to sentence. And even for the purpose of this proceeding in the Star Chamber it appears that it was from Coke that he derived all his information. It was not till the beginning of the next year, when things were at length ready for the indictment of the Somersets, that he was called into council upon the case.

How and when Bacon first became acquainted with Sir George Villiers would be well worth knowing; but there is no record of it to be found. It was in the autumn of 1614 that Villiers first attracted the King's notice. On the 23d of April in the next year he was knighted and made a gentleman of the bedchamber, and received a pension of £1,000. In the following January we find Bacon corresponding with him in the style of a familiar acquaintance. But when and in what circumstances they were introduced to each other we have no means of knowing. In such a relation, acquaintance would ripen fast. A very young man, modest and unassuming as yet, of a sweet countenance, and with gracious, open, and easy manners, rising suddenly into so distinguished a position, might naturally either seek or be sought by Bacon, whose age and eminence would entitle him, and whose taste and disposition would lead him, to be at once familiar. Five or six years after, when Villiers had suffered a course of advancement rapid and unexpected enough to turn any man's head, we have evidence from a quarter quite unprejudiced of the charm which still hung about the outside of him. At a tilt given in honor of the French ambassador on the 8th of January, 1620-1, Simonds D'Ewes, then a boy of eighteen, had a long look at him; and the record of his impression set down in later life shows that neither time nor experience, nor the bitter political hostility of the



party to which he belonged, had been able to efface the pleasing image which it left in his memory.

"After this, most of the tilters, except the Prince, went up to the French Lords in a larger upper room of the house, standing at the lower end of the tilt-yard; and I, crowding in after them, and seeing the Marquis of Buckingham discoursing with two or three French Monsieurs, I joined them, and most earnestly viewed him for about half an hour's space at the least; which I had opportunity the more easily to accomplish, because he stood all the time he talked bareheaded. I saw everything in him full of delicacy and handsome features; yea, his hands and face seemed to me especially effeminate and curious. It is possible he seemed the more accomplished, because the French Monsieurs that had invested him were very swarthy, hard-favored men. That he was afterwards an instrument of much mischief both at home and abroad is so evident upon record as no man can deny; yet this I do suppose proceeded rather from some Jesuitical incendiaries about him, than from his own nature, which his very countenance promised to be affable and gentle."<sup>1</sup>

There is no better testimony of our good opinion of a man than an inclination to think that whatever we do not like in him is the fault of somebody else — especially when we do not know whose; and we may judge how attractive a person Villiers must have been in the days of his first rising, when as yet he had not offended or disappointed anybody, from the fact that after all the offense he had given to the Puritans, so formal and Orthodox a Puritan as D'Ewes could retain so agreeable an impression of him. I doubt whether any favorite of any sovereign *seemed* more likely to become a universal favorite than George Villiers when he first appeared in Court.

From a letter to the King, dated 22d January, 1615, we learn what Bacon's first impression was on examining the case against Somerset. The evidence consisted chiefly of confessions obtained from the subordinate actors before their trial, and could not now be altered or added to.

<sup>1</sup> *Autobiography of Sir Simonds D'Ewes*, vol. i., p. 166.

Weston, the under jailer, who was charged with administering the poisoned food; Mrs. Turner, the procuress, who was charged with putting the poison into it; Helwysse, the Lieutenant of the Tower, who had known what was going on and connived at it; Franklin, the apothecary, who had supplied the poisons to Mrs. Turner; all these had been examined, indicted, tried, found guilty, and hanged. And whatever may be thought of the sufficiency of the evidence upon which they were convicted — of which, by the way, I doubt whether any of the reports are complete enough to give us the means of judging, — we need not scruple to believe that they were all guilty, because before they died, when they could have no motive for accusing themselves falsely, they all confessed their guilt. But though a man's evidence, however bad his character, may generally be accepted as conclusive against himself, it is plain that, as against other people, the testimony of actors in such a business as this stood in need of corroboration. It is true that they had all been examined, and confronted, and reëxamined, as often as Coke thought necessary, and that *to him* the depositions seemed conclusive enough not only to make a case for a jury, but to justify provisional announcements "for the satisfaction of the multitude" that the case was proved. Besides the declarations in court which he had authorized on the 19th and 23d of October, in which the complicity of the Earl and Countess of Somerset was distinctly indicated, he had made other extraordinary announcements with his own mouth. On the 27th of November he had informed the public from the Bench in open court that "knowing as much as he knew, if this plot had not been found out, neither Court, city, nor many particular houses had escaped the malice of that wicked crew." And again on the 4th of December (having been ordered to postpone the trial of one of the prisoners, and fearing that the public might draw some false in-

ference in his favor) he had taken occasion in the same public manner to declare not only that the proofs against him were clear, but that secrets had been discovered which, though he might not yet disclose them, "made our deliverance as great as any that happened to the children of Israel." But all this made the case only the more difficult to deal with. When announcements like these were made by the Chief Justice from the Bench, it was of the first importance that the evidence, when produced, should bear them out; for otherwise the popular conclusion would inevitably be that something had been hushed up. If the Lords should acquit Somerset after what Coke had said of the evidence to convict him, what could people think but that the great fish had broken through the net? If, when evidence of such a portentous conspiracy was in the possession of the Lord Chief Justice, no one should be called in question, what could they think but that somebody was implicated with whom justice dared not meddle? Now it unfortunately happened that when Coke was inclined to believe a thing, very little evidence was enough for him; and that which had satisfied him on this occasion could not be expected to satisfy anybody else. Of the great conspiracy which he thought he had discovered, and the discovery of which he had thus prematurely announced, he had absolutely no evidence at all beyond the uncorroborated declarations of a man under sentence of death, who was pretending secrets in order to prolong his life. And with regard to Somerset, the particular piece of testimony which he regarded as "*sufficient* matter against him," — meaning, of course, matter sufficient to insure conviction, — was upon the very face of it, as reported by himself, obviously and utterly insufficient. For the question being whether *the Earl* was an accessory to the death of Overbury *before* the fact, the "*sufficient* matter" was Franklin's confession of a conference, two years *after* the death

of Overbury, with the *Countess*, during which she went into an adjoining room and returned out of it, having (as was *supposed*) taken instructions from the Earl, who was *supposed* to be within. So that even if the evidence had been sufficient to prove that they were *then* in guilty collusion (which it plainly was not, since the witness neither saw the man nor heard what he said), it could not at the very worst prove more than that he was an accessory *after* the fact. But to Coke in his present humor anything was evidence which implied accusation, and, finding that Mrs. Turner's maid-servant could say that the Earl was in the house at the time, he set down the whole thing as proved; and, wanting no further testimony from Franklin, had him brought up for trial forthwith.

This was on the 27th of November. But the trial of the Earl could not be proceeded with for some time to come; the Judges having decided that he must not be tried before the Countess, who, being with child, could not be tried till after her delivery, which did not take place till the 9th of December. On the 19th of January, however, they were both indicted for procuring and consenting to the murder of Overbury, as accessories before the fact; and a true bill was found against them.

At this time it was intended, I presume, to proceed with the arraignments at once. But important despatches having been received from Sir John Digby, then ambassador in Spain, from which it appeared that Somerset had had some underhand intelligence with the Spanish ambassador, and revealed things to him which were meant to be kept secret, it was thought necessary to inquire into that matter first. Digby was accordingly sent for; the prosecution for the murder was postponed; and the stage was left clear during the interval for the other business then waiting for settlement.

Not long after the Lord Chancellor had another attack of illness — an attack so severe that it seemed likely to

prove fatal. This could not but suggest the important question, who was to succeed him? a question in which Bacon had a personal as well as a public interest; though it seems that on second thoughts he determined to suppress all allusion to it for the present. I say on second thoughts; because in this case again we happen to have a copy of the first draft of the letter which he sent to the King on the occasion, as well as the letter itself, so that we may trace the change in his intention. The letter as it stood in his own collection is no doubt a transcript of the first copy, and runs thus: —

A LETTER TO THE KING TOUCHING THE LORD CHANCELLOR'S SICKNESS.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — I am glad to understand by Mr. Murray that your Majesty accepteth well of my poor endeavors in opening unto you the passages of your service, that business may come the less crude and the more prepared to your royal judgment; the perfection whereof, as I cannot expect they should satisfy in every particular, so I hope through my assiduity there will result a good total. My Lord Chancellor's sickness falleth out *duro tempore*. I have always known him a wise man, and of a just elevation for monarchy. But your Majesty's service must not be mortal. And if you leese him, as your Majesty hath now of late purchased many hearts by depressing the wicked, so God doth minister unto you a counterpart to do the like by raising the honest. God evermore preserve your Majesty.

Your Majesty's most humble subject  
and devoted servant.

Feb. 9, 1615.

Before this was despatched, Bacon heard from Murray that the King had himself written to the Lord Chancel-

lor. This, it seems, induced him to rewrite (or at any rate in writing fair to alter) his letter in the latter part, and to substitute that which follows ; which is the letter that went.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — I am glad to understand by Mr. Murray that your M. accepteth well of my poor endeavors in opening unto your M. the passages of your service, that business may come the less crude and the better prepared to your royal judgment. The perfection whereof is such, as I cannot presume I shall be able to satisfy the same in every particular, but yet I hope through my assiduity I shall be able to give your M. an honest account of the total.

My L. Chancellor's sickness falleth out *duro tempore*. I have ever known him a wise man and of a just elevation for monarchy. I understand this afternoon by Mr. Murray that your M. hath written to him, and I can best witness how much that sovereign cordial wrought with him in his sickness this time twelvemonth, which sickness was not so much in his spirits as this is. I purpose to see my L. tomorrow, and then I will be bold to write to your M. what hope I have either of his continuance or of his return to business, that your M.'s service may be as little passive as can be by this accident. God have your M. in his precious custody.

Your M.'s most humble subject

and most bounden servant,

FR. BACON.

1615.<sup>1</sup>

The result of Bacon's observations of the Lord Chancellor's condition was unfavorable. He evidently thought that all was over, and that the place would be vacant immediately ; whereupon (the consideration of a successor being a matter of too much importance to be post-

<sup>1</sup> The part of the paper which contained the month-date is worn off.

poned any longer out of delicacy) he proceeded to set forth to the King the conditions of the question, and the several courses among which he had to choose. The conclusion to which his statement was meant to lead was that he was himself the fittest man for the office; which I suppose was no more than he believed to be true. I am not aware that there was at that time any professional etiquette which forbade him to mention his own name; and in advising the King to do that which he believed to be best for him he could not be violating any rule written in the nature of things. The fault, therefore (if fault there was), must have been in the manner of doing it, not in the thing itself; and for the manner we must look to the terms of the letter which he wrote; a letter of which (however private and confidential at the time) he certainly did not wish to make a secret with posterity, seeing that he preserved a copy in his own collection, which was meant for the benefit of posterity. It has indeed suffered a little hitherto from the well-meant manipulations of Tenison, which succeeding editors have not entirely removed, and which we have the means in this case of discriminating with certainty. But they affect only the style and taste in its literary aspect, and are now at last, I trust, completely eliminated.

The copy which follows is taken from the Lambeth MS., which has Bacon's own docket upon it, and in the absence of the letter actually despatched must be accepted as the highest authority.

#### A LETTER TO THE KING TOUCHING THE LORD CHANCELLOR'S PLACE.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — Your worthy Chancellor, I fear, goes his last day. God hath hitherto used to weed out such servants as grew not fit for your Majesty. But now he hath gathered to himself a true sage, or *salvia*, out of your garden. But your Majesty's service must not be mortal.

Upon this heavy accident I pray your Majesty in all humbleness and sincerity to give me leave to use a few words. I must never forget, when I moved your Majesty for the Attorney's place, it was your own sole act, more than that Somerset, when he knew your Majesty had resolved it, thrust himself into the business for a fee: and therefore I have no reason to pray to saints.

I shall now again make oblation to your Majesty, first of my heart, then of my service, thirdly of my place of Attorney, which I think is honestly worth £6,000 *per annum*, and fourthly of my place of the Star Chamber, which is worth £1,600 *per annum*; and with the favor and countenance of a Chancellor much more.

I hope I may be acquitted of presumption if I think of it, both because my father had the place, which is some civil inducement to my desire (and I pray God your Majesty may have twenty no worse years in your greatness, than Queen Elizabeth had in her model, after my father's placing), and chiefly because since the Chancellor's place went to the law, it was ever conferred upon some of the Learned Counsel, and never upon a Judge. For Audeley was raised from King's serjeant; my father from attorney of the wards; Bromley from solicitor; Puckering from Queen's serjeant; Egerton from master of the rolls, having newly left the attorney's place.

Now I beseech your Majesty let me put you the present case truly. If you take my Lord Coke, this will follow: first your Majesty shall put an over-ruling nature in an over-ruling place, which may breed an extreme. Next you shall blunt his industries in matter of your finances, which seemeth to aim at another place. And lastly, popular men are no sure mounters for your Majesty's saddle. If you take my Lord Hubbard, you shall have a Judge at the upper end of your council board and another at the lower end, whereby your Majesty will find your prerogative pent; for though there should



be emulation between them, yet as legists they will agree in magnifying that wherein they are best. He is no statesman but an œconomist, wholly for himself; so as your Majesty, more than at outward form, will find little help in him for your business. If you take my Lord of Canterbury, I will say no more but the Chancellor's place requires an whole man; and to have both jurisdictions, spiritual and temporal, in that height, is fit but for a king.

For myself, I can only present your Majesty with *gloria in obsequio*: yet I dare promise, that if I sit in that place your business shall not make such short turns upon you as it doth, but when a direction is once given, it shall be pursued and performed, and your Majesty shall only be troubled with the true care of a king, which is to think what you would have done in chief, and not how for the passages.

I do presume also, in respect of my father's memory, and that I have been always gracious in the lower house, I have some interest in the gentlemen of England, and shall be able to do some effect in rectifying that body of parliament-men, which is *cardo rerum*. For let me tell your Majesty, that that part of the Chancellor's place, which is to judge in equity between party and party, that same *regnum judiciale* (which since my father's time is but too much enlarged) concerneth your Majesty least, more than the acquitting of your conscience for justice. But it is the other parts, of a moderator amongst your Council, of an overseer over your Judges, of a planter of fit justices and governors in the country, that importeth your affairs and these times most.

I will add also, that I hope by my care the inventive part of your Council will be strengthened, who now commonly do exercise rather their judgments than their inventions, and the inventive part cometh from projectors and private men, which cannot be so well; in which

kind my Lord of Salisbury had a good method, if his ends had been upright.

To conclude: if I were the man I would be, I should hope, that as your Majesty hath of late won hearts by depressing, you should in this leese no hearts by advancing: for I see your people can better skill of *concretum* than *abstractum*, and that the waves of their affections flow rather after persons than things: so that acts of this nature (if this were one) do more good than twenty bills of grace.

If God call my Lord, the warrants and commissions which are requisite for the taking of the seal, and for the working with it, and for the reviving of warrants under his hand, which die with him, and the like, shall be in readiness. And in this time presseth more, because it is the end of a term, and almost the beginning of the circuits; so that the seal cannot stand still. But this may be done as heretofore by commission, till your Majesty hath resolved of an officer. God ever preserve your Majesty.

Your Majesty's most humble subject  
and bounden servant,

FR. BACON.

12th Feb., 1615.

I should not have thought it worth while to make any comment here, were it not that Lord Campbell appeals to this letter as containing evidence in itself that Bacon was really the meanest of mankind; and that too with the letter itself lying fairly before him and fairly laid before his readers. The reason he gives is that it is "something very like suing to be made a Judge and bargaining for a place of judicature," — practices which Bacon had himself noted as disqualifying the suitor. *Something like* suing to be made a Judge no doubt it is: it is advising the King to make him Lord Chancellor. But it is

also something very *unlike* what Bacon meant when he denounced the practice : for it is really a piece of *advice* offered to the King in the King's own interest by a person whom he had encouraged and invited to advise. When Bacon said that he should for his own part "suspect" a man who sued to be made a Judge, he did not mean a man in the position of Attorney General, or otherwise entitled to offer counsel in such matters ; still less a man whose suit consisted in an appeal to the personal knowledge of his qualifications possessed by the patron himself, as proved in a long course of service. If all suits were urged on similar grounds and in a similar spirit to this, there would be no more harm in suing for a judicial office than for any other. And to say that it is "something like *bargaining* for a place of judicature" is not only to misapprehend, but absolutely to pervert and read in an opposite sense the nature of the proposal. What he *offers* for the place is only that which in accepting it he must necessarily relinquish. He could not keep the Attorney Generalship and the Clerkship of the Star Chamber if he became Lord Chancellor ; and though he might perhaps have made something of them by selling the reversions beforehand, I suppose nobody will say that in offering to forego that right and give up his patents *gratis*, he was proposing anything in the nature of a corrupt bargain. His enumeration of the four "oblations" which he was going to make was in fact a warning that he was *not* going to make oblation of money.

Happily neither the King nor Villiers required any such propitiation, and he received a message in reply which amounted to a promise of the Chancellorship when it should be vacant ; as I gather from the following letter, which comes also from his own collection. The heading is the docket, written in his own hand.

A LETTER TO SIR G. VILLIERS TOUCHING A MESSAGE BROUGHT TO HIM BY MR. SHUTE, OF A PROMISE OF THE CHANCELLOR'S PLACE.

SIR, — The message which I received from you by Mr. Shute hath bred in me such belief and confidence, as I will now wholly rely upon your excellent and happy self. When persons of greatness and quality begin speech with me of the matter, and offer me their good offices, I can but answer them civilly. But those things are but toys. I am yours surer to you than to my own life. For, as they speak of the Turquois stone in a ring, I will break into twenty pieces, before you have the least fall. God keep you ever.

Your truest servant,

FR. BACON.

xv<sup>th</sup> of Feb., 1615.

My Lord Chancellor is prettily amended. I was with him yesterday almost half an hour. He used me with wonderful tokens of kindness. We both wept, which I do not often.

The Chancellor was in fact so much better that it now seemed likely that he would overcome his disease completely, and live to take up arms once more in defense of his Court against a new aggression. For Coke — whose elevation to the King's Bench and a seat in the Privy Council, though it may have made his collisions with Prerogative less frequent, had not at all allayed his thirst for jurisdiction — had lately found a clause in an old statute which, with a little straining, might be construed as forbidding all other Courts to meddle with any case which had been adjudicated in his own; and a case had just occurred which gave him an opportunity of putting it in force. A man against whom judgment had been obtained in the King's Bench by a fraudulent creditor, having applied in vain for a reversal of the judgment in

the same Court, had carried the case into Chancery, and obtained there a decree in his favor, for non-execution of which the fraudulent creditor had been committed to prison. The case being again brought before the King's Bench upon a writ of *habeas corpus*, Coke decided that the decree and imprisonment, being after a judgment at common law, were unlawful, and that the Court ought to relieve the prisoner. And there the matter rested up to the 27th of January; when Bacon informed the King that he heard no further speech of it, and that he thought the common employment of the Chancellor and Chief Justice in the business of Somerset would suspend the quarrel for the time. This, however, does not appear to have been the real history of the delay. Protection against imprisonment was not the only relief which the Court could offer to its client. The passing of the decree in Chancery was held by Coke to be an indictable offense: and though the case, being new, took some time in preparation, it was ready before the term ended. On the 12th of February (which was the last day of it) indictments of *præmunire* were preferred in the King's Bench against all the persons who had been concerned in the proceeding in Chancery, — the plaintiffs, the counsellors, the solicitors, and the clerks. They were preferred with Coke's full sanction and approbation, and only failed because he could not by instruction, authority, expostulation, or threats of committal — all of which he used to the full — induce the grand jury to find a true bill. Of this dispute (remarkable as a case in which Coke was in the wrong, and posterity has not taken his part) Bacon sent the King a full report, with advice how to make use of it for the settling of his authority and the strengthening of his prerogative according to the true rules of monarchy.

The result will be seen hereafter. But the postscript<sup>1</sup>

<sup>1</sup> "Your Majesty's commandment speaketh for pardon of so long a letter, which yet I wish may have a short continuance and be punished with fire."

shows that he was beginning to feel a little uneasy in his new position of confidential adviser of the King in matters properly belonging to the Council Table, without having a seat there. It is easy to understand that the position was both invidious and disadvantageous; invidious, because he had to give opinions privately which affected the interests of others; disadvantageous, because he could not appear in person to maintain them. The proper and natural remedy was to make him a Privy Councillor. He had already spoken to Villiers on the subject, and represented to him how materially he would be strengthened thereby for his present course of service. But the apparent prospect of an immediate vacancy in the Chancellorship had suspended the project for the time; because if Bacon succeeded, the thing would come of itself. Now Ellesmere's unexpected recovery, promising to keep him in his present place for an indefinite period, raised it into importance again and made it desirable to have the other measure despatched without further delay. He accordingly renewed his motion to Villiers in the following letter:—

A LETTER TO SIR GEORGE VILLIERS, TOUCHING A MOTION TO SWEAR HIM COUNCILLOR. FEBRUARY 21, 1615.

SIR, — My Lord Chancellor's health growing with the days, and his resignation being an incertainty, I would be glad you went on with my first motion, my swearing privy councillor. This I desire not so much to make myself more sure of the other, and to put it past competition (for herein I rest wholly upon the King and your excellent self), but because I find hourly that I need this strength in his Majesty's service, both for my better warrant and satisfaction of my conscience that I deal not in things above my vocation, and for my better countenance and prevailing where his Majesty's service is un-

der any pretext opposed, I would it were despatched. I remember a greater matter than this was despatched by a letter from Royston, which was the placing of the Archbishop that now is; and I imagine the King did it of purpose, that the act might appear to be his own.

My Lord Chancellor told me yesterday in plain terms, that if the King would ask his opinion touching the person that he would commend to succeed him upon death or disability, he would name me for the fittest man. You may advise whether use may not be made of this offer.

I sent a pretty while since a paper to Mr. John Murray, which was indeed a little remembrance of some things past, concerning my honest and faithful services to his Majesty; not by way of boasting (from which I am far), but as tokens of my studying his service uprightly and carefully. If you be pleased to call for the paper, which is with Mr. John Murray, and to find a fit time that his Majesty may cast an eye upon it, I think it will do no hurt; and I have written to Mr. Murray to deliver the paper if you call for it. God keep you in all happiness.

Your truest servant.

Of the paper concerning his own services here referred to, which would have been of great use to a biographer, I have not met with any traces; nor do we hear any more of it. But it is clear that at this time the value of his services was well understood by the King, and that Villiers (whose influence was increasing daily) was taking a lively and unselfish interest in his fortunes, — an interest founded apparently on genuine respect and admiration, and not expecting to be paid for in any kind of unworthy compliance. Nor had there been any time when the duties of his place were more according to his mind. In the contention between the Common Law and the Prerogative, which was the most important business then in hand, — and in which his conduct, whether

excusable or not, is now commonly assumed to stand so much in need of excuse, — there can be no doubt, I think, that the side which was assigned to him by his office (for I suppose that even now an Attorney General is not expected to *oppose* the government which he serves) was the side which he believed to be right, and on which (had office and the hope of office and the wish for office been all alike out of the question) he would have ranged himself, simply as a disinterested statesman and patriot. Nor was the vindication of public justice in the case of the murder of Overbury a cause less after his own heart. As the case stood now it presented many difficulties, but the end which he had to aim at was the same which, for the good of the country, and without consideration of any personal interest of his own, he wished to see attained. Assuming that his attachment to the Crown (which was his party) was of the same complexion as the attachment of a modern conservative to the conservative party, or a modern liberal to the liberal party, I do not find that in pursuing the best paths towards the Chancellorship he was at this time called upon to take any step which his judgment did not approve or his conscience sanction.

It will be remembered that the arraignment of the Somersets for the murder of Overbury, which seemed to be on the point of coming on in January, had been postponed till the arrival of Sir John Digby from Spain. The postponement seems to have been at the instance of Coke, who, coming across a confidential despatch of Digby's which had got into Somerset's hands, and hastily inferring that it had been intercepted by him and the contents hidden from the King, scented high treason. Digby arrived on the 21st of March, and was immediately put into communication with Coke. But the inquiries which followed brought out nothing to the purpose. It appeared that Somerset was not, and never



had been, a pensioner of Spain; and that though he had had private dealings with the ambassador about matters of state, which at another time might perhaps have exposed him to a censure in the Star Chamber for contempt, they had nothing to do with the present charge and were not fit to be mixed up with it. So the preparations for the indictment went on.

Among these was a reexamination of Lady Somerset upon a scruple of the King's, which deserves attention, as showing that the object of these preparatory examinations was not to *make* a case, but to find out what the case was.

While Overbury was in the Tower, the Countess (then Lady Essex) had written a letter to the Lieutenant, cautioning him as to the disposal of certain tarts, and one sentence ran thus: "If he should send this tart and jelly and wine to your wife, then you must take the tart from her, and the jelly, but the wine she may drink it if she will, for in that there are no letters, I know: but in the tart and jelly I know there is," etc. The word "letters" was known to be jargon for "poison." But who was "he"? If "he" was meant for Somerset (then Rochester), it was a strong piece of evidence against him; for it was good proof that the Countess at that time thought him likely to send tarts which she knew to be poisoned. But though Coke noted in the margin that "'he' is interpreted Rochester, for Rochester in truth sent it," there is nothing in the words or context that requires it to be interpreted so. "He" might quite as well mean Overbury. It was thought expedient therefore to put the question to herself, and on the 8th of January, being examined concerning the letter, she made two confessions which seemed to settle the matter conclusively. She confessed first, that by those words "If he should send, etc.," "she meant the Earl of Somerset, for he used to send many tarts and jellies to him;" and

secondly, "that by these words in her letter 'Do this at night and all shall be right,' she meant that the tart and jellies then sent, wherein were poisons, should be given to Overbury that night, and then all should be well." The letter thus interpreted formed a very important link in the chain of evidence, and Bacon was prepared to use it accordingly. But when the King came to examine the evidence for himself (which Coke had contrived — unfortunately in my opinion — to prevent him from doing during the first three months) the interpretation of the first passage struck him as so improbable, that he referred the question again to the Commissioners for investigation, who found that he was right and left that link out of the chain.

The task of the Government had become very difficult and delicate in consequence of the premature announcement of the Earl's complicity before the fact, as a thing proved and established. For on the one hand the evidence, though affording a strong *presumption* that he was guilty, was not altogether conclusive; and on the other hand the great popular excitement and expectation, stimulated and sanctioned as it had been by the man who had best means of knowing and was held to be the highest authority, might easily have dangerous consequences, if it should be disappointed either by the withdrawal of the prosecution or even by a verdict of acquittal. Already the people were watching with jealousy the delay of the trial of those who were really the principals, and remembering the words of Weston when he hoped that the great flies would not be let through while the small ones were caught. If the prosecution of Somerset had been dropped, it would certainly have been considered a defrauding of justice from fear or favor of the person; and even if he had been tried and acquitted, the danger would scarcely have been less: for it would have been regarded as an acquittal of a Lord by Lords, — a Lord

notoriously guilty of a crime for which his suborned agents, being commoners, had been hanged. That he *was* guilty, though it may appear doubtful now, was not doubted then by anybody; but how far it could be *proved* that he was guilty, was a point which might be very well doubted even by those who were most convinced in their own minds of the fact. Nor could it be regarded as a matter of indifference. Justice as administered in Government prosecutions had not acquired authority enough in popular opinion to overrule strong popular prejudices, and in the still excited condition of the public mind an acquittal would have caused serious discontent. The public declarations of the Earl's guilt having been so strong, while the proofs appeared on inspection to be in some respects so weak, the result of a trial was a matter of just anxiety; and certainly if he could by any fair means be induced to remove the difficulty by a confession, it would have been the best thing that could happen. But what inducement had Somerset to confess, if ever so guilty? Suppose him to have been privy to the murder before it was done: still he knew that, having kept so carefully out of the way, the evidence to connect him with it could not be much or direct. He knew therefore that he had two chances of escape. The King — either upon some misgiving as to the force of the evidence, or some fear of meddling with so powerful a man, or some remnant of affection for one who had so lately and so long been his bosom-friend — might shrink from bringing him to trial. And again, if brought to trial he might be acquitted. Upon what motive should he throw away two such chances of escape? The only motive that could be presented to him was a hope that if he voluntarily confessed his guilt, he would have a better chance of mercy than if he stood upon his innocence and were found guilty upon the evidence. Now there can be no doubt that this was true. There can be no doubt that

the King would really have been glad of an excuse for using his prerogative of mercy, and that he believed (as in those days most people did) that a clear, voluntary, and penitent confession furnished such an excuse. Could nothing be done then to inspire Somerset with such a hope? Of course a direct and explicit promise was not to be thought of; because a direct promise of pardon if he confessed would have seemed like a bargain and a bribe to purchase the confession. Upon such terms an innocent man, if appearances were against him, might think it prudent to confess himself guilty. But it occurred to the King that when the time came near such a hope might be put into his head by some friend who, though speaking without authority, might seem to speak from knowledge. That he made some suggestion to this effect, appears from a letter of Bacon's to Sir G. Villiers.

The same letter supplies us with a good illustration of the relation at this time subsisting between the Government and the Judges in cases of public prosecution. "Yesterday," says Bacon, "being Wednesday, I spent four or five hours with the Judges, whom his Majesty designed to take consideration with the four Judges of the King's Bench of the evidence against Somerset. They all concur in opinion, that the questioning him, and drawing him on the trial is most honorable and just, and that the evidence is fair and good." The Judges therefore were *advised with*.

Before the case was brought into Court the evidence for the prosecution was laid before them, and their opinions were asked whether it was a case fit to proceed with. For though it may seem that to a government instituting a prosecution for the simple purpose of *trying* whether a man be guilty or not guilty, the verdict should be a matter of indifference, and accepted, whichever way it goes, simply as an answer to the question asked, it was certainly not so regarded in James's time. Even in the

case before us, which is the strongest imaginable, — a case in which the Government had literally nothing to gain or lose except reputation for justice, — it is evident that an acquittal was feared less as a failure of justice than as a dishonor to the King. And how (it may be fairly asked) should an acquittal in such a case have been a dishonor to the King? The King's favorite falls under heavy suspicion of having been accessory to the murder of one of the King's subjects. He is formally accused and tried before a jury of his peers. His peers acquit him. What, it may be asked, is that to the King? We often hear *juries* blamed for verdicts of not guilty; but who ever thought of blaming the Crown? The answer, I think, must be that in the relation which once subsisted between the King and the people, such a feeling was natural and appropriate; and that, though that relation was now materially changed, the old feeling still remained, — an anomaly frequently observable in the course of social alterations, which seldom proceed all together; but either the opinion runs ahead of the practice, or the practice of the opinion. [Originally the punishment of all crimes rested with the King alone. Judges were at first only deputies; juries were at first only witnesses. In process of time they came to be regarded as *checks* upon the King. The Judges were to see that the laws were not infringed; the juries to see that the fact was proved. But still the King was the accuser, and to accuse a man who was not guilty was false accusation. We can still understand that the acquittal of a man prosecuted for a *political* offense is a damage to the government that prosecutes him; and I fancy that in James's time a similar feeling extended to all prosecutions instituted at the suit of the Crown. The conviction seemed necessary in order to justify the prosecution; for an acquittal implied that the prisoner had been brought to trial on insufficient evidence. People had not yet

learned to regard the proceeding before the Court simply as a *trial* of the question, — a reference of it to the Judge and Jury to know whether the prisoner was guilty or not. Still less had they learned to regard a prejudication of that question as unjust and injurious, on the ground that until the case had been openly heard nobody could know. The Government, having privately examined both the witnesses and the prisoner, were supposed to have already satisfied themselves of his guilt; and the trial was looked on as little more than an appeal to an open tribunal for confirmation of the judgment. Certainly from Coke's doctrine that the evidence against the prisoner ought to be so conclusive as to preclude the possibility of an answer,<sup>1</sup> it would directly and logically follow that a verdict of not guilty was a censure upon the King. This at any rate is certain — that in those days when a man was once brought up for trial the honor of the King was supposed to be interested in obtaining a conviction; and therefore it was found to be expedient, *before* bringing him up for trial, to ascertain upon the best authority which could be got that the prosecution was "honorable and just" and the evidence "fair and good."

The suggestion of hopes to Somerset that his confession would be followed by mercy may have done some of the good which Bacon anticipated, in "attempering him at his arraignment;" but of "confession before arraignment,"<sup>2</sup> which was the King's object, there was as yet no offer or symptom. The truth, I think, was that he did not yet believe that he would be arraigned at all; nor had he yet exhausted the resources which he thought he possessed in the well-known weaknesses of the King. He had tried many ways to work upon him. He began when

<sup>1</sup> The true reason [for refusing the prisoner the aid of counsel] is that the testimonies and proof of the offense ought to be so clear, as there can be no defense to it.

<sup>2</sup> "The hope I had . . . was rather of attempering him at his arraignment than of confession before arraignment." Bacon to Villiers, 10 May.

first called in question with vehement upbraiding, against which he knew that James's soft and sensitive nature was seldom proof. When that failed, he tried to excite in him dislike and distrust of the Commissioners. Failing again in that, he addressed himself to his political anxieties and apprehensions, intimating that he had an important state secret to communicate. Being told to communicate it to the Commissioners, he refused; it was no business (he said) of theirs; he would tell it to Lord Knolles and Lord Hay if he might see them. This device was partly successful. With difficulty, and after considerable delay, he succeeded in getting a communication passed to the King without the intervention of the Commissioners; and the long lull which followed, — while Digby was expected from Spain, while the dispute between the Chancery and the King's Bench was at its height, and while the inquiry was diverted towards Spanish intrigues, a region in which he had nothing serious to fear, — may have deceived him into the hope that he had shaken the King's resolution; a hope which the King's undisguised anxiety to obtain a confession before trial would naturally confirm. Finding, however, by the last interview with the Commissioners that it was not so, and that unless he could find some new means of diverting the King from his purpose he would really be brought to the bar, he next tried to work upon his personal timidity. Having got no good by his offer to impart information which it concerned him to possess, he now threatened to disclose something which it concerned him to keep secret. The particulars of the message are not known, but it seemed to import a threat that if brought to trial he would publicly charge the King with being himself accessory to the murder — a threat by which he hoped no doubt to deter him from proceeding further. Again, however, he was disappointed. The King, though alarmed and agitated, was not to be frightened from his

purpose, but caused him to be informed that until he had either undergone his trial or confessed his crime, no private communication could pass between them.

The Lady's turn came first. At nine o'clock in the morning of the 24th of May, she was brought up to answer the charge in Westminster Hall, before a crowded and eager audience. Places to hear "were grown," says Chamberlain, "to so extraordinary a rate that four or five pieces (as they call them) was an ordinary price; and I know a lawyer that had agreed to give £10 for himself and his wife for the two days; and £50 were given for a corner that could hardly contain a dozen." The Countess pleaded guilty, as was expected. It was Bacon's business to pray judgment against her; which he did, closing his charge with the words —

"Frances, Countess of Somerset, hath been indicted and arraigned, as accessory before the fact, for the murder and impoisonment of Sir Thomas Overbury, and hath pleaded guilty, and confesseth the indictment: I pray judgment against the prisoner."

The prisoner being asked in the usual form what she had to say, the following passage occurred, according to the report in the State Trials: —

"*Countess of Somerset.* I can much aggravate but nothing extenuate my fault. I desire mercy and that the Lords will intercede for me to the King. (This she spoke humbly, fearfully, and so low that the Lord Steward could not hear it. But Mr. Attorney related it.)

"*Mr. Attorney.* The Lady is so touched with remorse and sense of her fault that grief surprises her from expressing herself: but that which she hath confusedly said is to this effect, That she cannot excuse herself, but desires mercy."

This was the whole of the proceeding that day, and it was over by noon. "She won pity (says Chamberlain) by her sober demeanor, which in my opinion was more curious and confident than was fit for a Lady in such dis-



tress ; and yet she shed or made show of some tears divers times. She was used with more respect than usual, nothing being aggravated against her by any circumstance, nor any invective used, but only touching the main offense of murder ; as likewise it was said to-day to be the King's pleasure, that no odious or uncivil speeches should be given. The general opinion is that she shall not die, and many good words were given to put her in hope of the King's mercy, wherein the Lord Steward with the rest of the Peers promised their best mediation."

" Her carriage (says Sherburn, writing to Carleton on the same day) hath much commended her : for both before and after her condemnation she behaved herself so nobly and worthily as did express to the world she was well taught and had better learned her lesson. . . . It is conceived by many that in regard she stood not upon her justification, but confessed and submitted herself to the law and mercy of the King, that she shall not die ; which they ground upon Mr. Attorney's speech, which did intimate such a kind of hope ; but for my part I am not so confident, because of the King's solemn protestation made at the first discovery of the business, that the severity of the law should be executed upon the offenders ; and seeing so many have already suffered I cannot believe he will spare this noble Lady, though the greatness of her birth and friends may plead much for her."

In the mean time she was condemned to be hanged, and taken back to the Tower ; most of the by-standers, according to Camden, pitying her.

On the same night, when Sir George More warned the Earl to be ready for his trial the next morning (for which it seems he was still unprepared, having trusted probably to the operation of his recent threat upon the King's mind), he was alarmed by the effect the message took upon him. According to Weldon, who professes to have

heard the story from Sir George himself, "he did absolutely refuse it, and said they should carry him in his bed; that the King had assured him he should not come to any trial, neither durst the King bring him to trial;" using such "bold and undutiful expressions" that Sir George went off in great consternation to Greenwich, waked up the King at midnight, and asked him what was to be done. The King, he adds, did not know, but "falling into a passion of tears" left it to Sir George's management, promising that if he "helped him in this great strait, he should find he did it for a thankful master." Upon which Sir George returned to Somerset at three in the morning, and assured him, as from the King, that though it was necessary that he should appear at the bar to satisfy justice, he should "return instantly again without any further proceedings." "With which trick he allayed his fury and got him quietly about eight in the morning to the Hall."

Stories told by men like Weldon are not the more to be believed because they have some foundation in fact. But when the fact can be discovered it generally detects the fiction in the superstructure. In this case we happen to have good evidence that some outbreak of the kind did occur on the part of Somerset, and that some immediate communication was made about it by Sir George More to the King. But the letter which proves that so much was true proves also that the rest of the circumstances were badly invented. The letter which contains the evidence is the King's answer to Sir George's communication, — a letter still extant in autograph. From this it appears that on the very eve of the trial More had reported to the King a new difficulty. Somerset had been seized with some "strange fit," — either was, or pretended to be, either mad or unable to move. In answer to which "strange news" the King directs him to let Lord Hay and Sir Robert Carr (who had already

been sent) speak with him first; and "when that is done," he adds, "if he shall still refuse to go, ye must do your office, except he be either apparently sick or distracted of his wits; in any of which cases ye may acquaint the Chancellor with it, so that he may adjourn the day till Monday next, between which time [and this] if his sickness or madness be counterfeited, it will manifestly appear." "If he have said anything of moment to the Lord Hay," he concludes, "I expect to hear of it with all speed; if otherwise let me not be troubled with it till the trial be past." This therefore was the last stage of the negotiation; and the end of it was that Somerset, finding that his last device had failed like the rest and that he could not help himself, consented to go and went quietly.

The throng was as great and the audience as distinguished as the day before; "more ladies and great personages," says Chamberlain, "than ever I think were seen at any trial." The proceedings were much more interesting. For the evidence which constituted the case against Somerset was now to be produced in public for the first time. The story of the murder, — the way in which and the persons by whom it was done, — had been heard over and over again; and the principal facts which involved the Countess as accessory had come out in the trials or confessions of her instruments. But with regard to the Earl, though it was understood upon what should have been good authority that there was conclusive evidence against him, no one had yet heard what it was.

The indictment having been read, the prisoner having pleaded not guilty, and the Sergeant Crier having called upon all those that were to give in evidence against him to make their appearance, Sergeant Montague opened the case with a brief statement of the several acts charged; concluding that the question the Peers had to

consider was in substance only this — “Whether my Lord of Somerset procured or caused the poisoning of Sir T. Overbury, or no?” after which, Bacon proceeded to explain the history of the case and the import of the evidence, and concluded by producing the evidence itself.

Of this evidence we have two independent reports, each of which proves the imperfection of the other in detail, while at the same time it bears witness to its accuracy in general. The imperfection was inevitable. Without a regular system of reporting, including relays of practiced hands conveniently placed for hearing, it must have been impossible to obtain anything like a *complete* account of a trial which lasted thirteen hours. No such system had yet been introduced; nor was it any object in this case with those who had command of the records to publish such an account. When a popular favorite, like the late Earl of Essex, — or the hero of a popular cause, like Sir Walter Raleigh after his late expedition, — or persons belonging to a party in the country considerable enough to make their discontent dangerous, like the Gunpowder conspirators, — were sentenced to the gallows or the block, the Government occasionally found it expedient to prevent rumors by publishing an authentic account of the charge and evidence. But in the case of the Somersets the popular sentiment ran all in favor of the sentence. It was not the execution but the respite that was likely to cause discontent; which the publication of an authorized report of the evidence for the conviction would have inflamed rather than allayed. In such cases the claim of Justice to publicity was held to be satisfied by the admission of everybody who could find room, to see and hear the proceedings. Those who were not there had to content their curiosity with what they could learn from those who were; among whom were always some who took notes, out of which

reports were manufactured for circulation in manuscript. From some manuscript of this kind — with the help perhaps of one or two others — the report of this case in the “State Trials” was made up; and it is one of the best in the collection. I cannot indeed think, as some critics seem to do, that it enables us to judge of the case as well as the Peers who heard it and could ask questions; but it does enable us to follow the course of the evidence and to judge of its general character. Though it cannot be trusted for giving a complete or even a correct representation of all the depositions which were read, or all that the *vivâ voce* witnesses spoke, it shows that each separate point which Bacon had undertaken to prove was brought forward in succession, with only a few words of preface to remind the Court of its place and office in the argument; that the evidence bearing upon it was then read, or the witnesses produced to give their testimony; and that that point was then closed, and left to make way for the next. And whatever may be thought of the conclusiveness of the evidence on some of those points, it cannot be denied, I think, that it is in every case pertinent, and material (as far as it goes), and used with scrupulous fairness.

As the whole proceeding was under Bacon’s direction, it may be worth while to go shortly through the heads.

1. In support of the allegation that the friendship between Somerset and Overbury had given place to mutual malice and ill-will, we have the testimony of two of Overbury’s servants, who had heard altercations or seen correspondence between them; and we have also Overbury’s own letters, which are certainly of a threatening character.

2. For the high nature of the secrets which had previously passed between them, we have again the testimony of a confidential servant of Overbury’s, who had seen him open, make extracts from, re-seal, and send

back again to Somerset, letters directed to the King ; and we have besides Somerset's own admission that their correspondence was conducted in cipher.

3. For the important allegation that before Overbury's imprisonment a plan had been under consideration for procuring his death in another way, — namely, by instigating a gentleman who had had a personal quarrel with him to assault and kill him, and that this design was not unknown to Somerset, — we have Somerset's own admission that such a thing had been “once resolved,” though it was “not followed ;” and we have also the direct testimony of the gentleman selected for the office ; who confessed that the Countess had promised him £1,000 and the conversion of Rochester from an enemy to a friend if he would do the deed ; and that he had moreover professed himself ready to undertake it, provided Rochester would undertake to procure his pardon ; which last condition the Countess was unable to promise, and so the negotiation was broken off.

4. “And now,” said Mr. Attorney (according to the report in the ‘State Trials’), “to the puddle of blood : the first link of which is that the means to entrap Overbury for the Tower, was by the means of my Lord of Somerset.”

I may observe by the way that the wording of the remark thus put into Bacon's mouth shows that we cannot trust the report for verbal accuracy, and gives us a kind of measure of the allowance that must be made throughout for the imperfection of the medium through which we see the image. But though it would be rash to assume that it reflects even the substance of all that was material in the evidence adduced ; there is every reason to believe that the writer was taking down as many as he could of the words which he heard, as correctly as he could.

The first link in the chain of evidence which was to

prove that Somerset had a hand in the preparatory arrangements by which Overbury was placed and kept within the power of his enemies, was established by Somerset's own admission under his own hand, in a declaration voluntarily addressed to the King, that he had "consented to and endeavored the imprisonment of Overbury."

5. "The second link," proceeded Bacon, according to the same reporter, "is how that Helwysse came to be Lieutenant of the Tower by your means; and yet that must have a color: my Lord of Shrewsbury and my Lord Chamberlain must prefer him to you as their friend, though it was resolved before that he should have the place."

For proof of this, we have Helwysse's testimony, confirmed by Sir Thomas Monson's, who was the messenger employed: only that Monson speaks of Northampton as the first mover.

6. "Now the third link," continued Bacon, "concerns the placing of Weston for his keeper."

For proof of this we have again the testimony of Sir Thomas Monson, who deposes that he recommended Weston for Overbury's keeper upon the entreaty of the Countess and with the knowledge of Northampton; and we have also Weston's own assertion that he was recommended by Lord and Lady Somerset; together with the declaration of a familiar acquaintance of his, that both before and after his appointment he was in frequent communication with the Earl, and professed to be in favor with him.

7. The "fourth link," which was the *date* of this placing and displacing of officers (an important point, because it was not a thing which could have been compassed by the Countess alone) was established by Helwysse's testimony, who had stated that Overbury was committed to the Tower on the 30th of April, himself appointed

Lieutenant on the 6th of May, and Weston underkeeper on the 7th.

8. "Now the fifth link," continued Bacon, "which I promised to show you, was that this must not be done suddenly, but by degrees ; and so he must be poisoned leisurely, to avoid suspicion. And in the mean space you entertained his father and mother with frivolous hopes, and yet indeed hindered and made opposition (but underhand) to all the means that were used for his delivery."

In proof of this Overbury's father was called ; who described particularly his communications with Somerset during his son's sickness and after his death ; and how he had been advised not to press to see him or petition for his release, lest he should protract his imprisonment.

9. The "sixth link," which was the indifference with which Somerset, in the mean time, really regarded Overbury's condition, was established by the personal testimony of his brother-in-law, Sir John Lidcot, who had previously taken Somerset for Overbury's true friend, but when he came to press him upon the matter, had been convinced that he was not dealing sincerely.

10. The "seventh link," which was "the manner of his keeping," — namely, the fact that though committed only for a contempt, he was kept (contrary to usage) as a close prisoner ; and that this was by Somerset's management, — was established by the testimony of Sir Thomas Monson, who declared that directions to keep him close prisoner had been given to the Lieutenant by Northampton and Somerset ; and it was further confirmed by that of Overbury's servant, Laurence Davis ; who, on applying to Somerset for leave to wait upon his master in the Tower, though he were shut up with him, had been put off with the excuse that "he shortly purposed to procure his total liberty, and this might hinder it."

11. "Now the eighth and last link," proceeded Bacon,



"is, in the interim that Overbury in the Tower was plied with poisons, my Lord thirsted after the news to know what became of him, and continual posts went between him and my Lady; and all this while bore him in hand with other pretenses."

In proof of which is adduced, first the confession of Franklin that he had been "a continual messenger between Weston and the Countess, to acquaint her how Overbury fared; who, according as she heard from the Tower sent the news presently to Court to the Lord of Rochester; secondly, the examination of Helwysse, who stated that he "received divers letters from the Countess, wherein she desired to know how Overbury did, that she might certify to the Court:" thirdly, an admission by Somerset himself that among the many letters which passed at that time between himself and the Countess, there *may have been* some which concerned Overbury (which he had at first denied): fourthly, a statement by Loubell (the French apothecary who attended Overbury) that Somerset had sent for him on three several occasions to ask him how Overbury was; on the second of which he had told him, being particularly questioned on the point, that he thought he might recover if he were at liberty.

12. "Now in respect Overbury had a working brain," Bacon proceeded, "my Lord of Northampton must in show negotiate about his delivery and the terms of his coming out, whilst they intended his poisoning. That was real, and the other but in pretense."

In proof of this, extracts were read from several letters from Northampton to Somerset, which leave no room for doubt that a game of double dealing in some kind, at the expense of Overbury, was going on.

"And here," Bacon concluded, "my part ends, and that that rests behind I leave to the two Serjeants."

13. Serjeant Montague followed, whose part was to

prove that Somerset's hand was in the empoisonment itself. This was the most difficult part of the case, and proved, as might have been anticipated, the weakest. For whatever may have been Somerset's real share in the murder, he had no occasion to show or use his hand at all in the actual administration of the poisons. In that, the Countess did not need his help; having sufficient malice, activity, and courage of her own, and sufficient instructors, assistants, and accomplices in Mrs. Turner, Franklin, Helwysse, and Weston. If he knew what she was about, he had only to let her alone. It follows that the absence of evidence implicating him personally cannot be taken as any strong argument of his innocence. But on the other hand, if any fact was established by Serjeant Montague which could not be accounted for without supposing him guilty, both the reporters have missed it. The facts upon which he seems to have relied were (1) That Somerset sent a powder to Overbury in a letter, which made him very ill. Which was not denied. But then it had been understood that it was *meant* to make him "a little sick:" and if the severity of the illness which followed was more than could have been produced without poison, it would have been hard to prove that no poison was given him about the same time by some other hand. (2) That he sent him tarts which were poisoned. And poisoned tarts were no doubt sent. But I cannot find any proof that they were sent by the Earl, or with his knowledge, except what is implied in the Countess's expression to Helwysse, "*I was bid* to bid you say," etc. And though Coke had noted upon this, "That must needs be Rochester, for none could bid or command her but he," I doubt whether he could have given a good reason why it might not have been her uncle Northampton. (3) That the Countess had received a letter from him in which he said "he wondered things were not yet despatched," whereupon she imme-

diately sent for Weston. But this fact rests entirely upon the evidence of Franklin; who could only say that "*she told him* the letter was sent from my Lord," and that "he thought" it was about Overbury: evidence which, even if given by a less exceptionable witness, was too loose and conjectural to support any safe conclusion.

14. The last part, which was assigned to Serjeant Crew, was more to the purpose. When the King told Somerset not long after he was first called in question, that from the very beginning of the business he had "ever and at all times behaved himself quite contrary to the form that men that wish the trial of the verity ever did in such a case," he was speaking of his behavior towards himself and the Commissioners. If he had known what else he had been doing elsewhere, he would not have seen any reason for withdrawing the charge. It may be possible to explain Somerset's proceedings when he first heard of Weston's arrest without supposing him to have been an accessory before the fact; but it must be said that they were exactly such as a man who knew that there was evidence in existence to convict him would naturally have resorted to.

The proofs on this point were gathered into three heads: 1. Practicing to suppress testimony. 2. Destroying or misdating letters. 3. Endeavoring to obtain a general pardon.

The evidence on the first head was not worth much. It was Franklin's account of his interview with the Countess at the Cockpit, which I have already mentioned as the evidence on which Coke very strangely relied for proof that Somerset was an accessory to the murder before the fact;<sup>1</sup> and though used by Serjeant Crew for the more modest purpose of proving that he "practiced" (*after* the fact) "to suppress testimony," it could not bring even that home to him, because no one but the

<sup>1</sup> See above, p. 82.

Countess could tell what part he took. The sum of it is that *she* sent for Franklin; told him that Weston had been taken and it was likely he would be so shortly; swore him to secrecy; and after consulting the Earl, who was in an inner room, "came again and told him that the Lords, if they examined him, would put him in hope of a pardon upon confession; but, said she, believe them not; for when they have got out of you what they would, we shall all be hanged." It was something, however, to know that Somerset was in consultation with her on that occasion; and to prove this, an examination of the Countess was produced, in which, according to this reporter (who means to quote the words), "she confessed all that Franklin said concerning her discourse with him, and that my Lord was with her that night in the Cockpit:" a circumstance, it must be admitted, which makes it seem *likely* that he was there to assist her in shutting Franklin's mouth.

The evidence on the second head touches him nearer.

Laurence Davis, Overbury's servant, had asked, after his master's death, to be taken into Somerset's service, but was not listened to or befriended in any way, until "not long before the progress last summer" (which was the time when the inquiry was first raised), he sent to him for "all such letters, copies of letters, and other writings, as had passed between himself and Overbury:" upon which Davis sent him "all the letters that he then had, to the number of thirty or thereabouts."

"Afterwards, two or three days before the Earl was committed, he sent for this Davis, and gave him £30, as he told him, at the request of his servant Rawlins. 'And true it is,' quoth the Earl to Davis, 'I have heretofore been moved to retain thee, but out of sight out of mind, and so I forgot thee: but now I will remember thee. Hast thou any more writings?' Davis answered, 'Only two or three in the country.' Which my Lord willed him to bring him out of hand."

This again was suspicious ; but it might be only with a view to recover a more perfect recollection of what had passed, and be prepared to answer. The next step was in the same direction, but more desperate. It was that which I have already mentioned as the immediate occasion for placing Somerset in restraint. He had sent a pursuivant and a locksmith with a warrant to break into a house and search for a trunk with writings in it relating to one Mrs. Hynde ; which they found in the cellar and opened : “ and looking over some papers, the pursuivant, espying the names of Mrs. Turner, Overbury, and divers others in them, shut the trunk presently and said he would carry them to the Earl himself, which he performed accordingly.

This could hardly be the proceeding of a man who stood quite clear ; but an innocent husband might do as much for the protection of a guilty wife : and it may have been of great importance to the safety of the Countess that she should get into her hands all papers belonging to Mrs. Turner. But the next proceeding must have been on his own account, and is extremely difficult to explain upon any theory which supposes him innocent. Unfortunately our reporters do not go so well together at this part. The trial had now been going on for seven or eight hours, the weather was very hot, and they were probably both getting tired. Sometimes one and sometimes the other tells the story most intelligibly ; and sometimes the variation is so wide that I think they must have been reporting different passages, — each having missed one, but not the same. In these circumstances I think it may generally be assumed that the fuller and more intelligible report is probably the more correct. And here we get it from the manuscript sent by Sherburn to Carleton, and now among the State Papers. The passage seems to me so important that I give the whole without abridgment.

"4. The examination of Sir Robert Cotton was read, taken the 2d of December, whereby appeared how the Earl of Somerset got into his hands his own letters written to Northampton; for so Sir Robert Cotton then confessed that after the death of Northampton, being admitted to peruse and oversee all the writings, books, and papers in the Earl of Northampton's study, he amongst other papers had collected thirty several letters of the Earl of Somerset to Northampton, which he upon request delivered to my Lord Treasurer, who sent them to Somerset, *who burned them some two or three days before he was committed.*

"5. The examination of the Earl of Somerset was produced, wherein he confessed the delivery of divers letters and other things in a cabinet to Sir Robert Cotton (this was the cabinet before mentioned), and that Sir Robert Cotton told him *they might be so dated as might clear the prisoner if he were called in question about them*; and he further confessed that he did cut off some parts of them, and put out some words, etc. And all this was confirmed by the confession of Sir Robert Cotton himself; and indeed *when the foresaid letters were shown*, all the dates of them were written in Sir Robert Cotton's hand; for the Earl of Somerset, Northampton, and Overbury did never use to date any letters which passed between them. Amongst these letters thus antedated and mangled by Sir Robert Cotton, one letter especially was noted concerning the white powder which my Lord of Somerset sent unto Overbury, wherein Overbury writ to Somerset that the powder had wrought well with him, etc., but that he meant to take no more; *which letter was so dated as it might seem to have been the powder which he had received from Sir Robert Killigrew.*<sup>1</sup> But it could not be so, for the Earl

<sup>1</sup> There appears to be some error here. I think the reporter meant to say, or ought to have said, "the powder *which the Earl sent to Overbury by Davis.*" Davis had been employed about the beginning of June to carry a letter from the Earl to his master. He was not permitted to *see* him even in the presence of his keeper: so he delivered the letter to Weston, and as he delivered it he saw a little paper of white powder fall out; which was put in again. Weston confessed that a powder which he administered on the 3d of June made Overbury "very sick with extreme vomitings and purgings," and that it was poison. (Amos, p. 144.) Against this Somerset alleged that he had received the powder from Sir Robert Killigrew; that it was meant to act merely as a vomit: and that it had so acted, there was Overbury's own letter to witness. The question was whether the letter related to that powder or another, and all depended upon

received but three powders from Sir Robert Killigrew, the first whereof he told him he lost, the second the Earl took himself, the third, as it seemeth, he sent to Overbury by Rawlins, which gave him but one vomit and three stools; but there was a fourth which was sent by Davis, and fell out of the letter into his pocket, which Franklin confessed was a violent poison and so it seemed by the operation of it as before appears."

The other report, which keeps or tries to keep closer to the letter, supplies a fact of importance on this point—the time at which the dates were added.

*Sir R. Cotton* examined. — Saith my Lord delivered unto his hands many of Sir T. Overbury's letters; and that he cut and dated them by my Lord's direction; and that he put in dates the next day to some of the letters, *after Weston's arraignment.*"

When Weston's story was known, it was easy to select a date for the letter which was inconsistent with it.

The general pardon, which was the third head, was a precaution which had been attempted a little earlier, though not quite early enough. Somerset had indeed in the previous July obtained the King's signature to a general pardon; but it had been stopped at the seal, as being general beyond all precedent; insomuch that the Lord Chancellor positively refused to pass it, though commanded to do so by the King,<sup>1</sup> unless he might have a pardon himself for doing it: and there it stuck. This was before any suspicion had fallen upon him with regard to Overbury. But there was no time to be lost. And "a little before Michaelmas" (which was just the time when Coke entered on the investigation) Sir Robert Cotton "at my Lord Somerset's entreaty" got him a draft of the largest pardon, and the precedent was one

the date. Now the date was found on examination to have been put in by Sir R. Cotton, and so the letter was made to seem to relate to the powder which was sent by Davis and *could not have been* one of those supplied by Sir R. Killigrew.

<sup>1</sup> This was on the 20th of August, 1615, and shows what a mistake it is to suppose that the King had then lost his love for Somerset.

that King Henry VIII. granted to Cardinal Wolsey ; and told him, "if he desired such a one, the best way was to follow precedents.

"But upon this" (says the other report) "Sir Randall Crew observed that in those pardons which they took for patterns the course was to mention the greatest offenses as contempt, trespass, etc. (*sic*) but in this pardon they began with the least, and mingled the great crimes as if they would shuffle them in undiscerned, contrary to all patterns of pardons heretofore in what kind soever. And here Sir Randall Crew desired one particular to be regarded, that this very fact (accessary before the fact unto poisoning) was one of the branches of his pardon."

A petition, or "declaration" as it is called, sent by Somerset to the King in the beginning of February — the same of which Coke said at the time that good use might be made of some passages in it, "for he could not come nearer to an express confession" — was then read, and with the following remarks on it from Bacon the case for the prosecution closed.

"*Mr. Attorney.* — You see, my Lords, in this declaration of my Lord Somerset there is a brink of confession ; I would to God it had a bottom. He urges that in respect he hath formerly been so great in the King's favor and had never committed any treason, neither against his person nor state, that he should never have been called to an account for this fault, though he had been guilty ; that grace timely given is a benefit ; and that it is not only enough to give life, but to save reputation. But if he must be urged, then he desires his wife might be pardoned, having confessed the fact ; and that if he must be put upon the hazard of a trial, the King will before give him leave to dispose of his lands and goods to the use of his wife and child ; and that in the meantime he will give my Lord Hay and Sir R. Carr leave to come to him.



“*Mr. Serjeant Crew.* This declaration is an implicative confession.

“*Mr. Attorney.* I think there is none here but wonders, seeing that all poisons be works of darkness, how this should so clearly appear. But it seems his greatness in fortune caused this grossness in offending.”

Throughout the proceedings the Earl had been treated with as much respect and tenderness as a prisoner in similar case would receive at the present day. Though he was not permitted to interrupt the Counsel, he had had pen and ink allowed him (at Bacon's request, according to Gondomar) to take notes, and at five o'clock in the evening he was called on for his answer, with assurance that he should not be hurried. Of the value of his defense we are hardly in a condition to judge. The reports differ very widely here, and the reason of the difference is that one of the reporters (probably a not very skillful short-hand writer, and by this time very weary) was trying to follow the words as well as he could; the other, a more intelligent man, set down the substance from memory afterwards, with the help of notes taken at the time. The first, which is the report printed in the “*State Trials*,” is evidently meagre and incomplete, but probably follows the Earl's own order (for it gives the dialogue), which is desultory and ineffective. The other gives the substance of the defense upon the several heads successively, and very likely presents it to greater advantage than the original delivery. The reporter says that he made his answer “very confusedly, insisting most upon those particulars which were least material.” And yet the main plot and intention of the defense appears to have been bold and judicious. It was to acknowledge that he had quarreled with Overbury, and that he had “plotted with Northampton how to imprison him and in prison to keep him close debarred from the access of friends;” but to

assert that his object was only to prevent him from crossing his marriage, and that of any other purpose he was innocent and ignorant. This served as a parry to the whole of the two first heads of the charge: every one of the allegations and inferences contained in which might be admitted, without admitting that he had anything to do with the murder. The breach and malice; the high nature of the secrets which had been communicated; the underhand contrivances to get Overbury into prison, and to keep him there, and to prevent him from seeing his friends; the displacing of the Lieutenant and the under-keeper to make room for others whom he could trust to follow his directions; even the thirst for news of the progress of his sickness, and the mysterious letters from Northampton, became part of Somerset's own story: and yet the story was that he meant nothing worse than to prevent Overbury from using his tongue or pen to hinder the divorce, which was a necessary condition of the marriage. There are two points, however, which it fails to meet. The negotiation with Sir Davie Wood for the purpose of contriving that Overbury should be killed in a private quarrel does not fit into the story, and yet is neither explained nor disavowed: and Bacon's question why, if he only wanted to prevent Overbury from disturbing the match, he did not "suffer him to be employed beyond the seas? — Alas, Overbury had no such long hand as to reach from the other side of the sea to England, to forbid your banns or cross your love" — does not appear to have been answered at all. With regard also to Northampton's letters, which I have mentioned as leaving no room for doubt that a game of double-dealing in some kind was going on at Overbury's expense, Somerset's answer cannot in either version of it (for the versions differ materially) be accounted satisfactory. According to one, he professed not to know what Northampton meant; according to the other, he expressed a wish

“that his answers to those letters were now to be seen;” answers which he had himself destroyed.

To the direct evidence of his complicity in the poisoning, he took the obvious objections. Tarts had been sent to Overbury, — some wholesome, some poisoned. He had himself sent tarts. How did it appear that they were not the wholesome ones? Powders had been sent, and it was said that one powder poisoned him. It might be so: but the powder which *he* sent was obtained from Sir Robert Killigrew, was meant to produce a slight sickness, and had the effect intended, as appeared by Overbury's own report. For the letter which Franklin declared the Countess had shown him, he admitted that it would convict him if it could be produced, but denied that he had ever written such a letter; and objected, not unreasonably, to be convicted upon “the memorative relation of such a villain as Franklin.” He repeated his denial that he had had personal communications with him or with Weston; observing that though they may have come with messages to his house, it did not follow that he had seen them. The warrant to break open Weston's house and search for papers was granted, he said, at the request of his wife, who “desired it for Mrs. Turner's sake” — which was very likely not only the truth, but the whole truth.

So far, his answer to the charges was plausible, and (except in the two points which I have noticed), might seem to offer a reasonable explanation of all the facts adduced; which were all that he had expected to be brought against him. What he had not anticipated, and was not at all prepared for, was the discovery of his attempts to get rid of evidence which might incriminate him, and to forge evidence which might be alleged in exculpation. There was no way of reconciling this with the rest of his story; and being urged with it unexpectedly, he had no answer ready. He denied nothing, — neither the recov-

ery of the letters from Davis, nor the burning, nor the clipping, nor the dating. "Now for the ante-dates," he said, "which are used as a circumstance against me, Sir R. Cotton moved me to it, saying that the dates might prove useful to me at this time." So his words are reported in the "State Trials." According to the other report, "the dating of the letters he did not deny, but said Sir Robert Cotton did persuade him so to do, telling him that they might be so dated as might clear him of all imputation." So again with regard to the burning and clipping: "I confess Sir Robert Cotton delivered me back those letters I had sent my Lord of Northampton, and that I burned them, and that some parts were cut off as impertinent."

His attempt to arm himself beforehand with a pardon large enough to save him harmless in case he were questioned, was not so fatal a fact as the forgery. He could assign a motive for it which had no reference to his present case. Sir Robert Cotton (he said) advised him, seeing that he had received some disgrace in the opinion of the world through the failure of the last pardon, to recover his honor by getting one drawn after the largest precedent: so he "bade him search for the largest." "And for any general words, the lawyers put them in without his privacy."

At another time this explanation might have passed. At any time and in any circumstances Sir R. Cotton would have recommended him to follow precedents, and would have been ready to produce them; and it is conceivable that he might, under certain conditions, have advised him to outface Court enemies with some such Court triumph as this. But that if Cotton did not believe him to be guilty he would ever have advised him to resort to *forgery* for evidence of innocence, the Peers must have found it very hard to believe. And that the destruction, mutilation, and misdating of the letters, and the procure-

ment of a very unusual kind of protection, should come all together, just at the time when he knew he was to be called in question for the murder of the man to whose affairs the letters related, and the history of whose death depended very much upon the dates, must have seemed a coincidence which called for explanation. He had not a word of explanation to offer. The effect of his defense, though it began confidently and appears to have contained one or two spirited and forcible passages, was ruined by this fatal defect, and evidently made no impression upon the Court in his favor: so little, indeed, that Bacon did not think it worth while to make any reply. When Somerset had said all he could think of — for he was neither hurried nor checked nor in any way interfered with — Bacon rose, and, according to the report in the “State Trials,” addressed these few words to the Court: —

“It hath, my Lord, formerly at arraignments been a custom after the King’s counsel and the prisoner’s defense hath been heard, briefly to sum up what hath been said: but in this we have been so formal in the distribution that I do not think it necessary. And therefore now there is no more to be done, but that the Peers will be pleased to confer, and the prisoner to withdraw until the censures be past.”

Somerset, as he withdrew, addressed the Peers again in a few words, — which read like the peroration of the speech which he had intended to make, but which had been upset by the unexpected evidence which confronted him — concluding with a protestation that he was “neither guilty nor privy to any wrong that Overbury suffered in this kind.” Then the Lord Steward summed up, and the Peers (having first conferred by themselves for the space of an hour, during which they sent for the

two Chief Justices to assist them, returned into Court, and being asked one by one, all answered Guilty. Upon which Bacon spoke again.

“My Lord High Steward, Robert Earl of Somerset hath been indicted and arraigned, and put himself upon his Peers, who all, without the difference of one voice, have found him Guilty. I pray judgment.”

And judgment was passed accordingly.

Somerset had said nothing whatever during the whole trial which in any way reflected upon the King.

The judgment of the by-standers appears to have quite concurred with that of the Peers. Chamberlain (though he cannot be taken as speaking for himself, because he did not stay to hear Somerset's defense) reports what he had found no doubt to be the general opinion, when, writing to Carleton on the 8th of June, he says : —

“When I wrote last I left the Earl of Somerset pleading for his life ; but that he said for himself was so little, that he was found guilty by all his Peers ; which did so little appal him, that when he was asked what he could say why sentence should not be pronounced, he stood still on his innocence, and could hardly be brought to refer himself to the King's mercy ; upon which terms he stands still ; and having leave to write to the King, hath only required that his judgment of hanging should be changed to heading ; and that his daughter might have such of his lands as the King doth not resume and reserve in his own hands.”

Sherburn, also an intelligent witness, writing to Carleton on the 25th of May, gives a fuller report.

“This day my L. of Somerset came likewise to his trial. . . . His L. had much favor shown him by being allowed for his better memory pen ink and paper, to take such notes as he thought best. His answers were so poor and idle as many of the Lords his Peers shook their heads and blushed to hear such slender excuses from him, of whom much better was expected. The only thing worth note in him was his constancy and undaunted carriage in all the time of his arraignment, which as it began so did it continue to the end, without any change or alteration.”

To these may be added the opinion of the author of the report of the trial which Sherburn sent to Carleton ; who, though he gives much the best and fullest and most spirited version of Somerset's defense that exists, evidently considered it a failure. I am not aware that any contemporary evidence can be produced which tells the other way. And it is quite possible that those who heard and saw the trial had better ground for their opinion than we know. It is the peculiar infelicity of Somerset's case (supposing him to have been innocent), that the only evidence in his favor is the absence of direct and conclusive evidence against him. Not a single fact was alleged at the trial, or has ever (so far as I know) been alleged since, which is at all difficult to reconcile with the supposition of his guilt. Nothing was proved or pretended in the nature of an *alibi*. He was always on the spot, always within reach, always in close and confidential correspondence with those who were certainly engaged in the murder. Nothing was brought forward which seemed to show that he was acting towards Overbury in a different spirit. We do not hear of any personal visit ; nor of any earnest endeavor to ascertain his real condition, with a view to help or to prevent consequences worse than were intended ; nor of any manifestation of surprise or regret at the event ; nor of any anxiety to understand how it came about. It is true there is a letter to Dr. Craig, written by Somerset, informing him that whenever Overbury desires to see him "the King is pleased he shall go," and adding a request from himself that he will give him his best help, and as much of his company as he shall require ; and there is another letter from Northampton to the Lieutenant of the Tower apparently upon the same occasion. But this was by the King's order upon the direct application of Overbury's father to the King himself ; and *after* this, if old Mr. Overbury is to be believed, Somerset told him that petitions to the

King for his son's release would hinder it, and advised him to send no more. Now if in addition to this unfortunate absence of all direct evidence in his favor, Somerset's manner when confronted with the confession of Sir Robert Cotton showed (as the report seems to indicate) confusion and perplexity, it is possible that the Peers may have had reason enough for their verdict, although to us the evidence may not appear to justify it. We hold cheap the authority of the Judges and Juries of those times, because they proceeded so much upon depositions, without producing the witnesses in open Court, where their behavior under cross-examination might have modified the effect of their testimony. And it is true that they would have been better able to judge if they had insisted more upon *vivâ voce* evidence. But we forget that in this very respect we are ourselves in a worse position to judge than they were. They had at any rate the advantage of seeing the prisoner and the counsel, and could ask questions of them. In many cases, and notably in this of which we are speaking, they saw several of the witnesses. We on the contrary have *nothing* but depositions to go upon, and can ask questions of nobody. We may assume, if we will, that we are wiser and juster and more virtuous, — ourselves being the judges, of course we are, — but I do not see how we can assume that we know as much about the cases. And therefore, though we may justly hesitate to accept *their* conclusions as conclusive, we ought, I think, to rest in skepticism, and not insist upon the substitution of our own.

And here I should have been content for my own part to leave this case, as requiring no further explanation. That Overbury was murdered in the manner described, and that the Countess was the chief procuress, there is no doubt at all. That Somerset and Northampton<sup>1</sup> were aiding and abetting, there is much reason to

<sup>1</sup> I include Northampton, because those who accept Somerset's story as true will find it difficult to refuse him the benefit of it.



suspect, though to us no absolute proof. That the discovery of all this was brought about by a rumor, which led to inquiry, and was followed up with a laudable determination, springing from a natural intolerance of murder, to get to the bottom of it if possible, — is a supposition which involves no difficulty, and leaves nothing unaccounted for. What reason is there for supposing that there *was* anything behind? My own answer is that there is no reason at all. I do not myself believe that there was anything behind. But it is true that there was at the time a general expectation of further discoveries, and there has been a prevalent belief since that some guilty secret was then hushed up. What it was the ingenuity of historians has exhausted itself in vain endeavors to conjecture. But the existence of such a belief is a fact which requires explanation, and the explanation I believe to be very simple.

Franklin, who, though a villain, seems to have been a man of humor and no fool, had discovered, in the course of the examinations which he underwent, the soft place in Coke's head. Before his trial he had dropped into his ear some dark hint of a great Popish poison-plot; which worked so powerfully, that that wonderful announcement from the Bench, which I have already mentioned, of the narrow escape of Court, City, and the greater number of particular houses from the malice of that wicked crew, followed immediately. And when after his conviction Dr. Whiting was sent to "press his conscience," he allowed it to be delivered of the following confessions, as noted down by Coke himself, I presume from Dr. Whiting's report.

28 Die Nov.

*The relation of Doctor Whightinge.*

The Doctor conferring with Franklyn, and the Lord Treasurer being named, he said that he was as far in as himself.

He said further that the Lady of Somerset was the most impudent woman that lived, and there was no hoe with her.

He confessed that he said at the bar to some near to him, that there were greater persons in this matter than were yet known, and so in truth then said he there are; and that although the Chief Justice hath found and sifteth out as much as any man could, yet that he is much awry, and has not come to the ground of the business; for more were to be poisoned and murdered than are yet known, and he marvelleth that they have not been poisoned and murdered all this while. He said further, that the man was not known that gave him the clyster, and that it was that did the deed.

I could have put the Chief Justice in the right way the first day I came to him, but now he hath put me in the right way to heaven.

And being asked whether he should not have had an hundred pounds to be employed to the Palsgrave and the Lady Elizabeth, answered An hundred! Nay five hundred. I will not say how much.

He saith that the Earl of Somerset and the Countess hath the most aspiring minds that ever were heard or read of.

He saith that the Earl of Somerset had a great book of policies and how to rise, which book Franklyn had once.

And saith that the Earl never loved the Prince nor the Lady Elizabeth. I could say more, but I will not.

Do not you marvel wherefore the King useth an outlandish physician and an outlandish apothecary about him, and about the late prince deceased? Therein saith he lieth a long tale.

Being told that the Queen had been extraordinarily sick and pained, and her young children taken away, said he, soft, I am not come to it yet.

I think next the gunpowder treason there was never such a plot as this is. I could discover knights, great men, and others. I am almost ashamed to speak what I know.

He could have confessed he had seen twenty letters from the Lieutenant to the Lady of Essex, whereof two he formerly confessed.

And Sir Thomas Mounson brought her word from the Lieutenant how Sir Thomas Overbury did, and so did one knight and another knight more.

If I cannot prove these things I should be ten thousand times

more the son of the Devil than now I am; but God has sent me now more grace than so to do.

It was said to him that it was not possible that so young a lady as the Lady Somerset should contrive such a plot without some helps. No, no, (said he) who can think otherwise? for the Lady had no money, but the money was had from the old Lady, one day £200, and another £500, for we wanted no money.

He gave a glance of Sir William Mounson for the bringing of an hundred pound for the feeding of the plot.

He said that there is one living about the town that is fit to be called in question about the pictures and the plot against the Earl of Essex.

I can make one discovery that should deserve my life.

He said he had some knowledge in all acts and villanies and knaveries in the world, but now he had recanted them and repented himself for them. He thanked God for it.

I could never find by any constellation or conjuration that I should be hanged; but therein the devil hath deceived me.  
FINIS.

If Coke had contented himself with taking down these offers of information in order to see whether any light could be got out of them, and kept them in the mean time to himself, all would have been well. But though the bait seems coarse and clumsy, it was so well suited to his appetite that he seized it without examining and swallowed it without pausing. The note of these confessions is dated, we see, the 28th of November. On the 4th of December he made that other announcement from the Bench (which I have also mentioned) of a discovery that made "our deliverance as great as any that happened to the children of Israel:" adding (it is said) an obscure hint that he knew something about the death of "that sweet Prince Henry."

It was out of these hints, as I conceive, that all the mystery grew. Hearing such sayings from the oracle on the Bench, no wonder that the people, whose imagination

was now all awake and agape for horrors, believed that some horrible iniquity was presently to be brought to light. No wonder that when nothing came they supposed that it had for mysterious reasons been hushed up; that thereupon they employed themselves in dark conjectures, which begot a brood of dark rumors; and that when Coke, not many months after, was removed from the Bench, they remembered the hints which had fallen from him on this occasion, and concluded that he had forfeited the King's favor by seeing too far into his secrets. A little reflection might indeed have told them that when a man like Coke becomes dangerous from knowing too much, to disgrace him without silencing him is the last thing upon which a King who feared him would venture. But people never trouble themselves on these occasions to reflect. All the rest was natural, and (as things appeared then) not unreasonable. Some great iniquity had been found out and hushed up. What? why? by whom? To the last question the answer was obvious: by the King; for who but the King had power to stop inquiry or forbid disclosure? And why should the King have stopped inquiry? Doubtless because he had done something which he did not wish to become known. And what was it then that the King had done, of which he so dreaded the discovery? This opened a wide field for conjecture. Any crime would do that was bad enough; and as there was no evidence to guide the guesser toward any one in particular, each chose the one he liked best; preference being generally given to that class of crimes which cannot be named; because in them evidence was less to be expected. With a general presumption like this against him, it would be hard for a man to get through his life without incurring suspicion of something in particular. And the King's conduct in the prosecution of this cause — straightforward, open, and consistent as it was — was found to supply some hints for the

suspicious. In the first place, when Somerset returned from Royston to London after the appointment of the commission, the King (having heard Coke's opinion of the evidence, but not seen the evidence itself) took leave of him with his usual demonstrations of affection; but observed, as soon as he was gone, that he should never see his face more. In the second place, after Somerset had been examined by the Commissioners, and they had reported that the examinations and testimonies gave ground in their opinion for vehement suspicion that he had been an accessory to the murder before the fact, the King showed great anxiety to induce him to confess himself guilty, and caused private communications to be made to him as by authority, holding out hopes of pardon if he would do so. In the third place, when Somerset declared to Sir George More that the King *durst not* bring him to trial, and seemed to threaten that if he did he would publicly "tax him" with something, the King did not treat this threat with indifference, but took counsel with his lawyers and judges as to the means of preventing him from putting it in execution. In the fourth place, on the day of trial it was observed at Court that when the news of the verdict reached Greenwich, the King, who had been restless and uneasy before, recovered his usual composure. In the fifth place, though sentence of death was recorded in the usual form against both the Earl and the Countess, he spared their lives.

It will hardly be contended that these particular facts would justify any serious suspicion of any serious criminality, were it not for the previous assumption that something had been hushed up, and the fair inference that there was something to conceal. If that previous assumption were withdrawn, it would be found that there is no ground whatever for any such suspicion. And withdrawn, I think, it must be, absolutely and unconditionally; as having a distinct, well authenticated, and un-

broken pedigree from nothing at all. The belief that something had been hushed up was the legitimate offspring of the belief that something of a dreadful nature had been discovered, which was never revealed. The belief that something of a dreadful nature had been discovered was the legitimate offspring of a public intimation to that effect from the Chief Justice of England. The intimation from the Chief Justice was the legitimate offspring (though an untimely birth) of his belief that he had discovered it. The belief that he had discovered it was the offspring (legitimate also, according to his own doctrine that the evidence of a man who accuses himself in his testimony is as strong as if on oath) of Franklin's liberal budget of confessions. And Franklin's budget of confessions was the natural offspring of his disinclination to be hanged sooner than he could help. Unless therefore there be any difficulty in believing that Franklin was a man who would tell a lie rather than be hanged, there is no reason for supposing that the iniquities he hinted at had any existence except in his own brain. By pretending to be able to disclose such things, he knew that he should at any rate *delay* his own execution. That his statements were false, we have what may be regarded as positive evidence: for there are among our State Papers several examinations taken down in Coke's own hand, evidently suggested by Franklin's information, and aiming to elicit evidence in corroboration of it, which show that he had followed the scent with his usual zeal and diligence and found nothing. A few vague rumors and a few old wives' stories were all the return of his industry.

This general assumption being withdrawn, the facts which remain admit, in my opinion, of an easy and sufficient explanation. The King parted with Somerset at Royston in his ordinary manner, because (making a just distinction between accusation and guilt) he would not treat as guilty a man who had not even heard what he

was accused of. He observed at the same time that he should never see his face more, because he feared, from what Coke had said, that the accusation would be justified by the evidence. After hearing the report of the Commissioners upon their first examinations of him, he was anxious, for the reasons which I have already stated and need not repeat, to induce him to confess his crime. When threatened with a counter-accusation against himself, he felt uneasy, because to one in his position such an accusation, however groundless, would have been at least extremely inconvenient. He refrained from carrying the sentence into execution, partly because he did not feel certain that it was just; partly because the utter ruin of so great a fortune was punishment sufficient for an example and a deterrent; and partly (perhaps chiefly) because he could not forget that the man had been for so many years his bosom friend, and to order him out to an ignominious death was more than he could bring himself to: a weakness, perhaps; but a weakness which, if not respected, may at least be excused.

A complete discussion of his behavior to Somerset during all this business would lead me too far away from my proper subject. If any reader wishes for further information as to the grounds upon which I dissent from many conclusions which have been commonly accepted, I must be content to refer him to a paper which I read to the Society of Antiquaries in March, 1866, and which will be found in the forty-first volume of the "*Archæologia*." <sup>1</sup>

This great cause being thus settled, — fortunately settled, I should say; for the carriage of it bred no trouble to the living, and the criticisms of posterity cannot disturb the dead, — the next care was to settle the differences between the Courts of law; which having only been adjourned for a few weeks were presently to come

<sup>1</sup> "Review of the Evidence respecting the Conduct of King James I. in the case of Sir Thomas Overbury, in a letter to C. Knight Watson, Esq."

up again. The indictment of Præmunire against the Chancery had failed in February, because the Grand Jury returned an *ignoramus* : but Coke had encouraged the plaintiffs to try again, promising them a better Jury another time. The argument of the Judges upon the Commendam case<sup>1</sup> had been adjourned in the beginning of May till the second Saturday of the next term, which would be the 8th of June ; so there was little time to spare. But the learned counsel had not been asleep in the interval, and everything was ready.

To strengthen himself for the encounter, Bacon again reminded Villiers of his suit to be made a Privy Councillor ; which was still under consideration. The result will be seen in the two next letters ; which come from his own collection.

A LETTER TO SIR G. VILLIERS TOUCHING HIS SWEARING COUNCILLOR. 30 MAY, 1616.

SIR, — The time is as I should think now or never for his Majesty to finish his good meaning towards me, if it please him to consider what is past and what is to come.

If I would tender my profit and oblige men unto me by my place and practice, I could have more profit than I can desire, and could oblige all the world and offend none ; which is a brave condition for a man's private. But my heart is not on these things. Yet on the other side, I would be sorry that worthless persons should make a note that I get nothing but pains, and enemies, and a little popular reputation which followeth me whether I will or no. If anything be to be done for yourself, I should take infinite contentment that my honor might wait upon yours. But I would be loth it should wait upon any man's else. If you would put

<sup>1</sup> An argument which, as involving questions touching the Prerogative of the Crown, the King had commanded the Judges not to proceed with till they had spoken with him ; and which they had proceeded with notwithstanding, only informing him that their oath forbade them to obey.



your strength to this business, I know it is done. And that done many things more will begin. God keep you ever. I rest

Your true and devoted servant,

FR. BACON.

30 May, 1616.

A LETTER TO SIR G. VILLIERS UPON THE CHOICE HIS M. GAVE HIM, WHETHER HE WOULD BE SWORN COUNCILLOR, OR HAVE ASSURANCE TO SUCCEED THE CHANCELLOR. 3 JUNE, 1616.

SIR, — The King giveth me a noble choice, and you are the man my heart ever told me you were. Ambition would draw me to the later part of the choice. But in respect of my hearty wishes that my Lord Chancellor may live long, and the small hopes I have that I shall live long myself, and above all because I see his Majesty's service daily and instantly bleedeth, towards which I persuade myself, (vainly perhaps) but yet in mine own thoughts firmly and constantly, that I shall give when I am of the table some effectual furtherance (as a poor thread of the labyrinth which hath no other virtue but an united continuance without interruption or distraction), I do accept of the former, to be counsellor for the present, and to give over pleading at bar; let the other matter rest upon my proof, and his Majesty's pleasure, and the accidents of time. For to speak plainly I would be loth that my Lord Chancellor, to whom I owe most after the King and yourself, should be locked to his successor, for any advancement or gracing of me. So I ever remain

Your true and most devoted

and obliged servant,

FR. BACON.

3 Junii, 1616.

It was not till the 9th of June that Bacon took the

oath of a Privy Councillor. In the mean time he submitted to the King a memorial of the course he wished him to take for the settlement of these questions of jurisdiction: which was, to have them both laid formally before the Council,—discussed, decided, and the decision solemnly recorded.

Substantially these suggestions were approved and acted upon. But since it was important to get the question concerning the Commendams settled before the following Saturday, whereas the indictment against the Chancery was not likely, in face of the proceedings which had been taken in the Star Chamber,<sup>1</sup> to be preferred again at present, it was thought best to take the Commendam case first and deal with it alone for that time. Accordingly, on Thursday, the 6th of June, a Council was held for this purpose at Whitehall, all the Judges attending; at which Council the point in dispute was fully explained and discussed, the opinion and advice of the Council formally taken, and the Judges (with an important exception in the person of Coke, who rather evaded the question than refused to concur) admitted their error and agreed in future to take the course for which the King contended.

I have never been able to sympathize with the rest of posterity, either in its admiration of Coke's behavior on this occasion, or in its reprobation of that of the other Judges. Coke's famous reply<sup>2</sup> has the advantage of being short, magniloquent, and intelligible, without any context; and therefore convenient for quotation; and being quoted without reference to the actual context, it sounds just as well as magnanimous. But let any one look at it as it stands in the narrative; let him consider the question to which it pretends to be an answer; and

<sup>1</sup> Against the movers, for contempt: some of whom had fled, and some were standing out and would not answer.

<sup>2</sup> When that case should be, he would do that should be fit for a Judge to do.

he will see that it is in fact a mere refusal to answer, — and that upon no reasonable ground. The question asked had nothing to do with the state of any particular case, but related to a general rule of proceeding applicable to all cases alike. In *any* case, when the Judges were officially informed that the rights of the Crown were interested in it and that the King desired to speak with them, was it or was it not their duty to stay proceedings till they had heard what he had to say? The question was asked then because it was important to know beforehand how they meant to act in such cases thereafter. If Coke thought it was not his duty, he ought to have answered no. If upon better consideration he thought it was, he should have answered yes, and promised to act accordingly. But upon what pretense could he postpone his answer till “the case should be”? He was not asked to give an opinion beforehand upon the merits of any case, nor could a direct answer to the question put imply by possibility any such opinion. The whole of the case concerning which his opinion was asked was already before him. He had already, in the very letter which was under consideration, given an opinion upon it. Whether that opinion was right or wrong, and whether he meant to act upon it another time, was the present question. What withheld him from answering?

I can hardly think that any one who has taken the trouble to read that letter will find any difficulty in believing that he felt he had been in the wrong. The extent of the royal prerogative was a question of law, determinable by statutes and precedents. The course taken on this occasion by the Judges under his influence was one of those encroachments upon the prerogative by which it has been gradually limited and reduced within narrower bounds. The change might promise to be beneficial; but it was a change. As the law then stood, the precedents were against them, and therefore they

were in the wrong. Eleven of them (who had probably formed no opinion of their own upon the question, but merely followed his) now saw that they had been in the wrong, and very properly submitted. Coke also felt that he had been wrong, but not being able to bring himself to own it, — a thing which he never found easy, — he took refuge in that magniloquent evasion: the whole proceeding from first to last being very characteristic of him, and in my opinion not at all sublime.

The question, however, was not the less practically settled: the King succeeded in holding his consultation, and the cause was allowed to proceed on the day appointed.

The *Præmunire* was not touched upon on this occasion. Only two days before, the Archbishop of Canterbury, with some other of the Council, had been directed to inquire into the history of that proceeding and ascertain who were the authors of it, — for the rumor was that it had been invented and advised by Coke himself, — and the further dealing with the question waited for their report.

Bacon's next employment — though merely ministerial and such as no other Attorney General would have been held morally accountable for — has been regarded in him as a serious betrayal of justice. It was the drawing of a pardon for the Countess of Somerset. This was of course an office which he could not have declined if he was to hold his place, for it was one of the regular duties of it. But I have no reason to think that it was unwelcome to him. What were his personal feelings with regard to sanguinary punishments, we have indeed no means of knowing. His official duty had never required him to take part in them. In the prosecution of unconfessing offenders to conviction and sentence, he was active and firm: so much was required for the vindication of the law. In what cases and how far the sentence should be

carried into effect, was another question, and one upon which he was never called upon either to decide or advise. In this case, however, it seems to me most probable that he acquiesced without remonstrance, outward or inward, in the known determination of the King to use in Lady Somerset's favor the prerogative which by law undoubtedly belonged to him. The right could not be disputed. Nor can it be truly said that justice was materially compromised by the exercise of it in this instance. It is true that the Countess, having been the prime mover in the matter, may seem to have been of all the party least entitled to mercy; and if justice required that the measure of punishment should always be in proportion to the moral culpability, it would not be easy to justify a distinction in her favor. Between the suborner and the suborned, indeed,—between the person who procures a murder under the passion of hate or fear, and the person who undertakes and executes it in cold blood for hire,—a question might be fairly raised which is morally the more culpable. But it is not a question which we need settle. The true principle of judicial punishment is not moral retribution, but self-defense: its proper and only legitimate object is to deter people from committing acts injurious to society. And if in the proceedings against the murderers of Overbury the object was to make it notorious that murder could not be committed with impunity by high or low, it cannot be denied that the lesson was effectually taught. The severity which was needed to enforce it fell heaviest upon those who came first; who happened to be the meaner instruments in whom a sufficiently striking example could not be made by any punishment short of death on the gallows; and the long interval which passed before the case against the greater persons could be ready for adjudication, together with the immense difference in their condition of life, made some alteration in the question. Ignominy,

and the utter ruin of so splendid a fortune, — sudden precipitation from such a height to such a depth, — was itself an example sufficient to warn and deter: and it is quite conceivable that the public execution of a young and beautiful woman might have interfered with the effect of it, by turning indignation into pity. I have heard it said by a wise man who had had much experience of the working of penal enactments, that he had no faith in the efficacy of punishments “except where they express and exasperate the general indignation of society against the delinquents.” We have it upon Camden’s authority that when the Countess received her sentence the general feeling among the by-standers was pity: and I do not find any evidence that the pardon was at that time unpopular. Posterity simplifies these problems by forgetting half the conditions; but even posterity would perhaps have taken her part if the King had been relentless.

The report of the Archbishop and other councillors who had been appointed to inquire into the history of the indictments preferred against the Chancery in the King’s Bench, does not appear to have been preserved. Either it failed to bring the authorship home to Coke, or it was reserved for the private account which had to be settled with him, and not allowed to mix itself with the question of state, which was to be dealt with upon its own merits.

To set that question at rest, and at the same time to remove some popular misapprehensions as to his own views and policy, the King went in person to the Star Chamber on the last meeting before the summer circuits, and made a public declaration concerning the several obligations of himself, his Judges, and his subjects in general: — a declaration with which everybody who wishes to form a judgment of his actions ought to make himself acquainted; for it exhibits his own idea, whether right or wrong, of the duty which belonged to his place.

This step was taken by Bacon’s advice, and I fancy

that I see traces here and there in the King's speech of the memorial by which the advice was probably accompanied; but if there ever was such a thing, it has not survived; and though the King was quick in taking suggestions from other minds, he assimilated them as quickly, and so converted them into his own that any attempt to separate the elements would be hopeless.

One doctrine he certainly held which is now heretical — that the Judges are answerable to the King, while the King is answerable only to God. But we must remember that, if this is heresy now, it is not because the doctrine was unconstitutional then, but because the constitution has been changed since. He did but hold as a living fact, with all its logical consequences, what the law still maintains as a fiction — that the King can do no wrong: a maxim which has its roots so deep in the constitution, that to this day we have not been able to get rid of it in theory, though by contriving that the King shall not be able to do anything without the concurrence of somebody who *can* do wrong, we have found a way to escape from its practical consequences. But that solution of the difficulty was not possible for the father of Charles I.; and if in the year 1616 Coke had been asked by whom and by what legal process the King could be called to account for his actions, he would not have been able to answer.

The point, however, was not material on this occasion. Though James would have thought that he was betraying the post which he was divinely appointed to defend if he had admitted the royal prerogative to be a fit subject of dispute in Court, that was not the question at issue in either of the cases with which he was now dealing. To say that the King's prerogative could never be lawfully called in question was one thing: to say that questions in which the King's prerogative was concerned were not to be determined without hearing what the

King had to say (and that was all he contended for in the Commendam case) was another. Nor was the right of the Chancery to give relief after judgment at common law (which was all that he maintained in the Præmunire case) dependent upon the doctrine that the Chancery was accountable to the King alone. If the right existed at all, it was still a right, whether the King were judge or the King's Bench.

Of these two questions, the first had been settled for the time by the late proceeding in Council, the decision of which was by the present declaration reinforced and proclaimed. But the second had still to be disposed of. The King's personal condemnation of the action as presumptuous, with a peremptory prohibition of its renewal, would not have been enough to satisfy the public that Coke had been at fault in law. It was necessary to put forth some formal manifesto with the reasons. Bacon, as we have seen, had proposed that this should be done by an act of Council, as in the Commendam case. But for some reason of which we are not informed — perhaps because in this case the *advice* of the Council was not wanted — it was decided to do it in the form of a decree. And on the 18th of July, 1616, a decree, which is evidently the work of Bacon, was issued under the Privy Seal.

The certificate of the learned Counsel on the question of law as referred to them by the Lord Chancellor on the 27th of March, concluded with an invitation to the King's Bench to produce precedents in support of their proceeding.

“But because matter of precedent is greatly considerable in this case, and that we have been attended by the Clerks of the Chancery with the precedents of that Court, and have not yet been attended by any officers of the King's Bench with any precedents of indictments, although we required them and gave them convenient



time to have attended us, if it shall please your Majesty to direct that the said officers shall attend us with their precedents, we shall give your M. faithful report of them as we have done of the other."

Of these precedents we hear no more. I presume therefore that none were produced; and what Coke might have been able to say in answer to the arguments urged by the Learned Counsel in their certificate must be left to conjecture. The decree, however, had not been issued without giving him a fair opportunity for saying what he had to say in defense of his own position. On the 26th of June he had been called before the Council to answer certain charges, formally preferred against him by the Solicitor General. Of these, his conduct in the matter of the Præmunire was one; and on that occasion, if he did not acknowledge the validity of the argument by which the King's order was justified, he did distinctly acknowledge the validity of the order itself. After urging some considerations in excuse rather than justification of what was past, he "added also further" (say the Council in reporting the proceeding to the King), "that for the time to come no man should make any opposition; for that the Judges having received your Majesty's commandment by the Attorney General that no bill of that nature should be hereafter received, *he and his brethren have caused the same to be entered as an order in the same Court; which shall be observed.*" It was with the allowance therefore of Coke himself (who did not on this occasion find it necessary to wait "till the case should be") that the question was settled, and settled according to the view which Bacon took of it.

But although Coke thereby acknowledged that the King had authority to decide the question, it does not follow that he thought he had decided it rightly: and it is due to him to add that, though he never raised any dispute about it in Council or in Parliament while he

lived, there is evidence in the papers which he left behind him that he thought the decision wrong. In the third part of the "Institutes," which was published after his death, there is a chapter on *Præmunire*; and in it a sentence occurs, which must have been written later than the 26th of June, 1616, and must therefore be accepted (if the editor has made no mistake) as representing his more mature judgment. It seems to imply a total repudiation of this decree of the 18th of July, precedents and all. The censure is indeed so general and so vague that it is impossible to infer from it what the point or nature of his objections was; and it may be that what we have is only a note made in the margin of a treatise which had been written before, and meant for no more than a memorandum to insert at that place an answer to the arguments contained in the decree; which answer was never written, or if written was not found by the editor. However that may be, the censure is too sweeping to be met by anything less than a general discussion of the whole question: a thing which I could not have attempted myself, but which I find supplied to my hand; and as Coke's note, though aimed at the reputation of Ellesmere (whom, as the person specially struck at in the attack, he seems to have mistaken for the principal actor in the defense), would really, if the censure were just, be very damaging to Bacon's reputation (who *was* the principal actor all through), it may be well to state the result of an elaborate examination of it by a critic learned in the law.

In the first volume of the "Collectanea Juridica" (printed in 1791) will be found a treatise of fifty-five pages, entitled, "A Vindication of the Judgment given by King James in the case of the Jurisdiction of the Court of Chancery, — that the Lord Chancellor should not desist to give relief in Equity, notwithstanding any proceedings at the Common Law; contrary to an opinion

lately published after the supposed author's [Lord Coke's] death ; wherein some errors in the translating and printing of the statutes of 27 E. 3 cap. 1, and 4 H. 4 cap. 23 are discovered." The writer begins by observing that after King's James's judgment was given, "all things were in peace": — that "the Chancery court went on in the times of the Lord Ellesmere, Lord St. Albans, Lord Coventry, and all others that were Lord Keepers of the great seal of England, ever since, as it had formerly done"; — that "the then Lord Chief Justice of the King's Bench [Sir Edward Coke] did never question that judgment, although he lived many years after, and was of four Parliaments, wherein he had both opportunity and power to have done it, if he had not known that judgment to have been according to justice and the laws of the realm : but he desisted, and did openly profess before the Lords of the Privy Council that he would not maintain a difference between the two Courts, nor bring it into question ; whereof entry was made in the Council-book 26 June, 1616" : — nevertheless that "the publisher of his third and fourth book of the Institutes, finding, as it should seem, some old notes, collected when the question was on foot and undecided, had taken the boldness to print them, long after the author's death ; and therein had made him to question all again, by mentioning many cases wherein divers persons had been indicted in Præmunire upon the statute of 27 E. 3, for seeking relief in Chancery after judgments given between the parties at the common law ; and concluding with [these words following] : ' See a privy seal to the contrary, 18 Julii, 1616, obtained by the importunity of the Lord Chancellor, being vehemently afraid. *Sed judicandum est legibus*, and no precedent can prevail against an act of Parliament. And besides, the supposed precedents (which we have seen) are not authentical, being most in torn papers : the rest of no credit.' " He then enters

into a complete and exhaustive examination of the whole case, taking each point in succession, comparing the copies of the records quoted by Coke with the originals, criticising his inferences, supplying his omissions, correcting his mistranslations, pointing out the consequences which would follow from his principles of interpretation if impartially applied, and concluding in all points in favor of the impugned decree.

The name of the writer does not appear to be known ; but he was evidently a lawyer familiar with the practice of the Chancery and the study of records ; and in the absence of all means of guessing what kind of answer Coke would have made, he leaves Bacon clearly in possession of the field.

Coke's defense of himself when called before the Council was pitched in an unusually low key, and so little impressive, that History seems hardly aware that he made any defense at all, or had any opportunity to make one. Hallam only says that after what passed at Whitehall on the 6th of June, "he was suspended from his office, and shortly afterwards dismissed;" taking no notice whatever of the proceeding on the 26th. Lingard is equally silent with regard to that proceeding. And Mr. Gardiner, who knows of it and mentions it, appears to have mistaken the information of the Solicitor General for the censure of the Board. "On the 26th," he says,<sup>1</sup> "he [Coke] was called before the Council; and after being charged with some pecuniary transactions of doubtful character, in which he had been engaged some years previously, he was *censured* for the words which he had used to the Jury in the cases of Glanville and Allen" [that was the *Præmunire* case]; "for his indecent behavior in refusing to listen to the argument of the Attorney General in the King's presence" [that was in the Council on the 6th of June on the *Commendam* case];

<sup>1</sup> Gardiner's *History of England*, 1603-1616, vol. ii., p. 281.

“and for his steadfastness” [that is, his refusal to answer the King’s question] “when the other Judges gave way.” And then, without any allusion to what Coke said in reply, he goes on to tell us that “a few days after he was again summoned before the Council,” and suspended from his seat at the table and from taking his part in the ensuing circuit. Now the fact (as I understand it) was, that the business of the Council was only to witness and report. The King had directed them to call Coke before them and hear what he had to say in answer to certain charges which would be set forth by one of the Learned Counsel. He was summoned accordingly; the charges were set forth by Sir Henry Yelverton; Coke made his answer; and the Council reported the substance of it to the King. Their report was not accompanied with any opinion or suggestion of their own upon the point at issue, and was drawn up in a style of studied respect and moderation, as if they wished to make the best of it. The censure was left to the King, who, not finding Coke’s answers satisfactory upon any of the heads, resolved to suspend him for a while from the exercise of his office, and at the same time to set him a holiday task. For the many questionable doctrines of law which he had been laying down of late in support of his official pretensions had not unnaturally suggested an inquiry whether all was good law that was set down for such in his “Reports:” and passages had been discovered in them (by whose industry I do not exactly know: but I think both Ellesmere and Yelverton were concerned in it, and probably Bacon himself) which were represented to the King as dangerous and requiring correction. Who accordingly directed the Council to call him before them once again, and inform him that it was his pleasure he should forbear for the present to sit at Council or on the Bench: and at the same time — because he was informed that there were in his books of Reports “many

exorbitant and extravagant opinions set down and published for positive and good law" — that he should employ the leisure of the vacation in reviewing and correcting them. "And having corrected what in his discretion he found meet in those Reports, his Majesty's pleasure was that he should bring the same privately to himself, that he might consider thereof, as in his princely judgment should be found expedient."

This was done on the 30th of June, 1616, and it was all that was done for the present. Of the result of Coke's review of his Reports and the King's final disposal of the case, we shall hear further on in the course of Bacon's correspondence. But it belongs to a later date, and I shall have some important papers to deal with before I come to it.

## BOOK VI.

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### CHAPTER I.

A. D. 1616. JULY-NOVEMBER. *ÆTAT.* 56.

THE removal of Somerset left the course clear for the gracing of Villiers ; and that wonderful upward career, begun so early, continued so long, and earned with so little effort or sacrifice on his own part, — for it seems that he had only to be himself in order to be entirely gracious in the eyes of a king whose affection and bounty had no limit — commenced at once. His first honors having to pass through the hands of the Attorney General, required the two to be brought into somewhat close relations.

The creation of Viscount took place at Woodstock on the 27th of August, and Villiers was now finally established in the office of "Favorite." "This is now the man," says Sherburn, writing to Carleton on the 20th, "by whom all things do and must pass ; and he far exceeds the former in favor and affection."

That he was not at this time insensible of the responsibility of the position, or indifferent to the duties which it entailed, or over-confident of his own capacity to discharge them, appears from the fact that he not only took in good part the counsels which Bacon offered him from time to time, but applied to him for more. For it must have been about this time that he desired his advice in detail as to the manner in which he should frame himself for the performance of his new duties. Some good

authorities, including Mr. Craik and Mr. Gardiner, would put it seven or eight months earlier; but the letter which Bacon wrote in answer (if the *form* of it in its earliest shape<sup>1</sup> has suffered no alteration in the editing) cannot have been written before Villiers was a Peer, and to suppose it later would involve other difficulties.

Nothing material depends upon the question whether it was written early or late in the year 1616. Upon any view of it — if it was written by Bacon — it contains his deliberate opinion as to the duty of a “Favorite” in those days, — that is, of a private and confidential councillor chosen by the King out of personal affection. The office itself was one which he did not approve of. It was of the nature of what was then called a “Cabinet Council” (a very different thing from that which now goes by that name); a remedy proposed in Italy and practiced in France for certain inconveniences incident to Councils of State; but a remedy, he says in his “Essay of Counsel,” “worse than the disease: which hath turned Metis the wife to Metis the mistress; that is, Councils of State, to which Princes are married, to Councils of gracious persons recommended chiefly by flattery and affection.”<sup>2</sup> I suppose the councils to which he alludes were bodies exercising the authority of Councils of State; which was not the case with James’s favorites, for they had no authority more than belonged to the offices to which they might be promoted. But the censure of the one was in effect a censure of the other, and before the publication of the essay in which it was expressed (which was shortly after the death of Salisbury) the application had become so obvious as to suggest the suppression of the last clause. But as Bacon could not prevent the King from being governed by a Favorite, his next best service was to in-

<sup>1</sup> There are two versions of this letter; of which I give here, from a copy in the Library of Trinity College, Cambridge — the only one I have met with — that which appears to be the first.

<sup>2</sup> This was written before 1612.



spire the Favorite with an honest ambition to govern him wisely and well. And the opportunity being offered to him, this is the way in which he endeavored to take advantage of it.

In this case, as in others of the kind, I do not hold it to be any part of my business either to applaud or to defend or to correct the opinions expressed ; but only to represent them faithfully, and to explain them where explanation is needed and I have any to offer.

A LETTER OF ADVICE, WRITTEN BY SIR FRANCIS BACON TO THE DUKE OF BUCKINGHAM, WHEN HE BECAME FAVORITE TO KING JAMES.

MY NOBLE LORD, — Being overruled by your Lordship's command, first by word, and since by your letters, I have chosen rather to show my obedience than to dispute the danger of discovering my weakness in adventuring to give advice in a subject too high for me. But I know I commit it to the hands of a noble friend, and to any others, for the nature of the discourse, it is not communicable.

My Lord, when the blessing of God (to whom in the first place, I know, you ascribe your preferment) and the King's favor (purchased by your noble parts, promising as much as can be expected from a Gentleman) had brought you to this high pitch of honor, to be in the eye, and ear, and even in the bosom of your gracious Master, and you had found by experience the trouble of all men's confluence, and for all matters, to yourself as a mediator between them and their Sovereign, you were pleased to lay this command upon me : —

First in general, to give you my poor advice for your carriage in so eminent a place, and of so much danger if not wisely discharged. Next in particular, by what means to give dispatches to suitors of all sorts, for the King's best service, the suitors' satisfaction, and your own

case. I humbly return unto you mine opinion in both these, such as an Hermit, rather than a Courtier, can render.

You are now the King's Favorite, so voted, and so esteemed by all.

In the first place, then, give me leave to tell you what this signifies; and next, what is the duty that lies upon you towards the King. That being done in a few words, I shall then come to the particulars which you must insist upon to facilitate your dispatches. It is no new thing for Kings and Princes to have their privadoes, their favorites, their friends. They have done it sometimes out of their affection to the person of the man (for Kings have their affections as well as private men), sometimes in contemplation of their great abilities (and that's a happy choice), and sometimes for their own ends, to make them whom they so stile, and are contented should be so stiled, to be interposed between the Prince and the People. Take it in either or any of these significations, let it be a caution unto you. If the King have made choice of you out of his affection, or out of the opinion<sup>1</sup> of your worth, to communicate his bosom thoughts with you, or perhaps to debate them, and so ripen his own judgment: you are bound in gratitude to return so much as possibly you can to advance your Master's service and honor. But were it (as I am confident it is not) to interpose you between himself and the envy of his people in general, or of some discontented party in particular, then you are bound for your own sake to watch over your actions.

Remember then what your true condition is. The King himself is above the reach of his people, but cannot be above their censures; and you are his shadow, if either he commit an error, and is loath to avow it, but excuses it upon his Ministers, of which you are the first

<sup>1</sup> So in the original. I think it should be "his opinion."

in the eye ; or you commit the fault, or have willingly permitted it, and must suffer for it ; so perhaps you may be offered as a sacrifice to appease the multitude. But admit you were in no such danger, as I hope you are not, and that you are answerable only to God and the King for your actions, yet remember well the great trust you have undertaken. You are as a continual sentinel, always to stand upon your watch, to give him true intelligence. If you flatter him, you betray him. If you conceal the truth of those things from him which concerns his justice or his honor (although not the safety of his person), you are as dangerous a traitor to his State as he that riseth in arms against him. A false friend is more dangerous than an open enemy. Kings are stiled Gods upon earth, not absolutely, but *Dixi dii estis*, and the next words are, *sed moriemini sicut* <sup>1</sup> *homines* ; they shall die like men, and then their thoughts perish ; they cannot possibly see all things with their own eyes, nor hear all things with their own ears ; they must commit many great trusts to their ministers. Kings must be answerable to God Almighty (to whom they are but vassals) for their actions, and for their negligent omissions. But the Ministers to Kings, whose eyes, ears, and hands they are, must be answerable to God and man, for the breach of their duties, in violation of their trusts, whereby they betray them.<sup>2</sup>

For the general, I say no more, but apply myself to the particular wherein you desire satisfaction ; in which my answer shall be plain, and as clear as I can. And sir, know this, I beseech you, that which I now write and recommend immediately to you, concerns also the King, and much more than you ; and because he cannot intend all things, and ordinary persons cannot have access unto him, or if they had, durst not speak with that freedom

<sup>1</sup> *Sunt* in the original.

<sup>2</sup> In the original there is not a fresh paragraph here.

you are bound to supply it, and to be his monitor, not in a saucy malepart<sup>1</sup> way, which may not take with him, but at seasonable times, which you may, nay which you must, watch for.

It is true that the whole Kingdom hath cast their eye upon you, as the new rising Star, and no man thinks his business can prosper at Court, unless he hath you for his good Angel, or at least that you be not a *Malus Genius* against him. This you cannot now avoid unless you will adventure a precipice, to fall down faster than you rose. Opinion is a master wheel in these cases. That courtier who obtained a boon of the Emperor, that he might every morning at his coming into his presence humbly whisper him in the ear and say nothing, asked no unprofitable suit for himself; but such a fancy raised only by an opinion cannot be long lived, unless the man have solid worth to uphold it; otherwise when once discovered it vanisheth suddenly. But when a favorite in court shall be raised upon the foundation of merits, and together with the care of doing good service to the King, shall give good dispatches to the suitors, then can he not choose but prosper. This,<sup>2</sup> Sir, I find is your noble ambition, and it is worthy the honor you possess: And that this may succeed according to your desire, I shall humbly propound unto you these rules to be observed, and I beseech you, if you approve of them, constantly to pursue them.

1. If the suit be either of importance for value, or of difficulty, direct that it be set down in writing; then appoint it to be left with you in writing; and appoint the suitor to attend for his answer so many days after as may be competent; of which time let a note be taken by your Secretary. So shall you be eased of the suitor in the mean time, and he rest quiet till the day appointed in expectation of his dispatch.

2. To prepare yourself for these answers in their times,

<sup>1</sup> So in original.

<sup>2</sup> The original has "thus."

set apart an hour in a day, or two, to sort your Petitions; which will be easily done if your Secretary draw lines under the matter, which always lies in a narrow room.

3. Think not yourself nor any one or two private friends or servants to be able to comprehend the true reason of all things; there is no such omniscieny to be look'd for. But dividing the Petitions as they come to your hands into several sorts according to the nature of the matter, first, cause two or three several copies to be made of the Petition, or the substance of it.

4. Then make choice of several men well versed in these<sup>1</sup> several professions or qualities, whom you think you may trust, and to them severally send copies, desiring them within twenty days after to return unto you in writing their opinions of the Petition, and their reasons for it, or against it; and let not one of them know what the other doth.

5. Then set apart an hour or two twice in a week, to peruse these Petitions again, and the answers of the referees; out of which compared together, as out of *Responsa prudentium*, you may collect such a judgment, as within a short time you shall be able to judge of the fidelities and abilities of those you trust, and return answers to petitions of all natures as an oracle. And be assured of this, that next to the granting of the request, a reasonable and a fair denial (if the matter will not bear it to be otherwise) is most acceptable.

*That you may dispose of all these sorts of business in a fit and dexterous way, I conceive that all matters of difficulty which will be presented to you will be one of these eight sorts, either concerning,*

1. Religion and Church men, or Church matters.
2. The Laws and the Professors thereof.
3. The Council Board, and matters of State.
4. Negotiation with foreign Princes or States.

<sup>1</sup> So in original. I think it should be *their*.

5. War by Sea or Land.
6. Foreign Plantations and Colonies.
7. Matter of Trade.
8. The Court or Curialitie.

What cannot be ranked under one of these heads will not be worthy of your thoughts, and you will find enough of these to take up your time.

But that you may not study your ease only, but chiefly your honor, and the honor of your Master: I beseech you to take these materials, thus divided into these eight sections, into your more serious thoughts, and propound to yourself some rules as landmarks to guide your judgment in the examination of every one of them, as [it] shall come to your hand; wherein I shall adventure to make an essay; please you to perfect it.

I. For Religion, if anything be offered to you touching it, or touching the Church, or Church men, or Church government, rely not only upon yourself, but take the opinion of some grave and eminent Divines; especially such as are sad and discreet men, and exemplary for their lives.

2. If any question be moved concerning the doctrine of the Church of England expressed in the 39 Articles, give not the least ear to the movers thereof. That is so soundly and so orthodoxally settled as cannot be questioned without extreme danger to the honor and stability of our Religion, which hath been sealed with the blood of so many Martyrs and Confessors, as are famous through the Christian World. The enemies and underminers thereof are the Romish Catholiques (so stiling themselves) on the one hand, whose tenents are inconsistent with the truth of Religion, professed and protested by the church of England (whence we are called Protestants) and the Anabaptists and Separatists and Sectaries on the other hand, whose tenents are full of schism, and inconsistent with monarchy: For the regulating of

either, there needs no other coercion than the due execution of the laws already established by Parliament.

3. If any attempt be made to alter the discipline of our Church, although it be not an essential part of our Religion, yet it is so necessary not to be rashly altered, as the very substance of Religion will be interested in it: Therefore I desire you before any attempt be made of an innovation by your means, or by any intercession to your Master, that you will first read over, and his Majesty call to mind, that wise and weighty Proclamation, which himself penned, and caused to be published in the first year of his reign, and is prefixed in print before the Book of Common Prayer (of that impression); in which you will find so prudent, so weighty reasons, not to hearken to innovations, as will fully satisfy you that it is dangerous to give the least ear to such innovators, but it is desperate to be misled by them: But to settle your judgment, mark but the admonition of the wisest of men, King *Solomon*, *Prov. xxvii. 21. My son, fear God and the King, and meddle not with those who are given to change.*

II. Next, touching the Laws (wherein I mean the Common Laws of England) I shall be the more sparing to speak, because it is my profession; but thus much I shall say with confidence, that if they be rightly administered, they are the best, the equalest in the world between the Prince and People; by which the King hath the justest Prerogative, and the People the best liberty; and if at any time there be an unjust deviation, *Hominis est vitium non professionis*. But that it may in all things have a fairer proceeding, let the King take a care, and as much as in you lies do you take care for him, that the Judges of the Law may be always chosen of the learnedst of the profession (for an ignorant man cannot be a good Judge) and of the prudentest and discreetest, because so great a part of the Civil Government lies upon their charge; and, indeed, little should be done in legal con-

sultations without them, and very much may be done by their prudent advices, especially in their Circuits, if right use were made of them. Believe me, Sir, much assistance would be had from them, besides the delivering of the gaols, and trying of causes between party and party, if the King by himself (which were the best) or by his Chancellor did give them the charge according to occurrences at their going forth, and receive a particular accompt from them at their return home. They would then be the best intelligencers of the true state of the Kingdom, and the surest means to prevent or remove all growing mischiefs within the body of the Realm. Next to the Judges, let care be taken that the Serjeants at Law be such as are most probable to be made Judges in the next turn, and never to be advanced to that state and degree (for it is so stiled) for favor or for reward, but only with an eye upon the public good. For the King's Counsel at Law, the King's particular interest will easily persuade him, and those who love his service, to make choice of the most eminent and most active; their experience in these places will make them able for any employment in that profession afterwards. In the Laws we have a native interest, it is our Birthright and our Inheritance, and I think the whole Kingdom will always continue that mind which once the two Houses of Parliament publicly professed, *Nolumus Legem Angliæ mutare*: under a Law we must live, and under a known Law, and not under an arbitrary Law is our happiness that we do live; and the Justices of Peace, if a good choice be made of them, are excellent instruments to this state.

III. For matter of state and affairs proper for Council board, I dare not take upon me to say much; they are *secreta & arcana*, and are not fit to descend to too low, to too petty matters, or private interests. Let the King be president of this Council himself, not so much by personal presence (but only in great and weighty af-



fairs) ; that may overawe the board too much, where in Councils there should be a freedom of discourse and of determination : but in pursuing the acts of his Council table. And I do heartily wish that the Councillors themselves would be so advised in their resolutions, that they should never be sudden, but that all things there propounded and debated one day should be revised the next, and then confirmed, or altered upon second thoughts. Such gravity in their proceedings would much become the honor of that Board ; and what is thus settled should not be altered again but upon great necessity.

In the choice of Privy Councillors, thus much only in the general, that there may be some of the number who are severally versed in all knowledges, for their better assistance upon Councils of that nature ; and although to some persons of great birth, the place of Princes<sup>1</sup> Counsellors may be bestowed as an honor unto them, yet generally the motive should be the Parts of the man and not his Person.

IV. The<sup>2</sup> Negotiations of Ambassadors, and Treaties with foreign Princes and Estates, the subject matter of the Treaty must guide the choice of the persons to be employed. But give me leave, I pray, to remember unto you the constant practice of that famous and wise Lady Q. Elizabeth (who was very happy, not so much in a numerous as a wise Counsel to advise her). If it were an Embassy of Gratulation or Triumph, she ever made choice of a person of honor and eminence in his degree, who, taking the employment as a work of favor, was willing to undertake it at an easy rate for the expense of the Crown (which hath not often been so of later times). But if it were upon some matter of importance from the State, there were always employed (at least joined in the Commission<sup>3</sup>) some persons of great judgment and

<sup>1</sup> So in the original. Should it not be "privy?"

<sup>2</sup> So in the original. It should apparently be "In the."

<sup>3</sup> The end of the parenthesis is not marked in the original.

known experience, and in such cases men over-green in years were never the principal agents ; yet some younger men were joined with the elder, to train them up in state affairs.

V. For matter of war, either by land or sea, your gracious Master [is] so settled in his judgment for peace, as he hath chosen for his Motto that part of our Saviour's beatitudes, *Beati pacifici*. It is a happiness to this nation to be in this blessed condition ; God send we surfeit not with it ; yet I must tell you, the best way to continue a secure peace is to be prepared for a war. Security is an ill guard for a Kingdom. But this Kingdom, where the Seas are our Walls, and the Ships our Bulwarks, where safety and plenty (by trade) are concomitant, it were both a sin and a shame to neglect the means to attain unto these ends : Let brave spirits that have fitted themselves for command, either by sea or by land, not to<sup>1</sup> be laid by, as persons unnecessary for the time ; let Arms and Ammunition of all sorts be provided and stored up, as against a day of battle ; let the ports and forts be fitted so, as if by the next wind we should hear of an alarum ; such a known providence is the surest protection. But of all wars, let both Prince and People pray against a war in our own bowels. The King by his wisdom, justice, and moderation must foresee and stop such a storm, and if it fall must allay it, and the people by their obedience must decline it. And for a foreign war intended by an invasion to enlarge the bounds of our<sup>2</sup> Empire, which are large enough, and are naturally bounded with the ocean, I have no opinion either of the justness or fitness of it, and it were a very hard matter to attempt it with help<sup>3</sup> of success, seeing the subjects of this kingdom believe it is not legal for them to be enforced to go beyond the seas without their own consent, upon hope of an unwarranted

<sup>1</sup> So in original: "to" should be struck out.

<sup>2</sup> The original has "your."

<sup>3</sup> So in original. A misprint, I think, for "hope."

conquest. But to resist an invading enemy, or to suppress rebels, the subject may and must be commanded out of the counties where they inhabit. The whole kingdom is but one entire body, else it will necessarily be verified, which elsewhere was asserted, *Dum singuli pugnamus, omnes vincimur.*

VI. But in the next place for foreign Plantations and Colonies abroad, that<sup>1</sup> both honorable and profitable to disburden the land of such inhabitants as may well be spared, and to employ their labors in the conquest of some foreign parts without injury to the natives. Yet these cautions are to be observed in these undertakings.

1. That no man be compelled to such an employment ; for that were a banishment, not a service fit for a free-man.

2. That if any transplant themselves into plantations abroad, who are known schismatics, outlaws, or criminal persons, that they may be sent for back upon the first notice : such persons are not fit to lay the foundation of a new colony.

3. To make no extirpation of the natives under pretense of planting Religion : God surely will no way be pleased with such sacrifices.

4. That the people sent thither be governed according to the laws of this realm, whereof they are and still must be subjects.

5. To establish there the same purity of Religion, and the same discipline for Church government without any mixture of Popery or Anabaptisme ; lest they should be drawn into factions and schisms, and that place receive them there bad, and send them back worse.

6. To employ them in profitable trades and manufactures, such as the clime will best fit, and such as may be useful to this Kingdom, and return to them an exchange of things necessary. .

<sup>1</sup> So in original. A mistake, I think, for "it is."

7. That they may be furnished and instructed for the military part, as they may defend themselves ; lest on a sudden they be exposed as a prey to some other nation, when they have fitted the colony for them.

8. To order a trade thither, and thence, in such a manner as some few merchants and tradesmen, under color of furnishing the colony with necessaries, may not grind them, so as shall always keep them in poverty.

9. To place over them such Governors as may be qualified in such manner as may<sup>1</sup> govern the place, and lay the foundation of a new kingdom.

10. That care be taken that when the industry of one man hath settled the work, a new man by insinuation or misinformation may not supplant him without a just cause ; which is the discouragement of all faithful endeavors.

11. That the King will appoint Commissioners in the nature of a Council, who may superintend the works of this nature, and regulate what concerns the colonies, and give an accompt thereof to the King or to his Council of state.

VII. For matter of Trade, I confess it is out of my profession, yet in that I shall make a conjecture also, and propound some things to you, whereby (if I am not much mistaken) you may advance the good of your country and profit of your Master.

1. Let the foundation of a profitable Trade be thus laid, that the exportation of home commodities be more in value than the importation of foreign, so we shall be sure that the stocks of the kingdom shall yearly increase, for then the balance of trade must be returned in money or bullion.

2. In the importation of foreign commodities, let not the merchant return toys and vanities (as sometimes it was elsewhere Apes and Peacocks) but solid merchandise, first for necessity, next for pleasure, but not for luxury.

<sup>1</sup> So in original. It should be "they may."

3. Let the vanity of the times be restrained, which the neighborhood of other nations have induced, and we strive apace to exceed our pattern; let vanity in apparel, and which is more vain, that of the fashion, be avoided. I have heard that in Spain (a grave nation, whom in this I wish we might imitate) they do allow the players and courtesans the vanity of rich and costly cloaths, but to sober men and matrons they permit it not, upon pain of infamy (a severer punishment upon ingenious natures than a pecuniary mulct).

4. The excess of diet in costly meats and drinks fet from beyond the seas would be avoided; wise men will do it without a law. I would there might be a law to restrain fools. The excess of wine costs the kingdom much, and returns nothing but surfeits and diseases: were we as wise as easily we might be, within a year or two at the most, if we would needs be drunk with wines, we might be drunk with half the cost.

5. If we must be vain and superfluous in laces and embroideries which are more costly than either warm or comely, let the curiosity be the manufacture of the natives: then it should not be verified of us *Materiam superabat opus*.

6. But instead of crying up all things which are either brought from beyond sea or wrought here by the hands of strangers, let us advance the native commodities of our own kingdom, and employ our countrymen before strangers: let us turn the wools of the land into cloaths and stuffs of our own growth, and the hemp and flax growing here into linen cloth and cordage; it would set many thousand hands on work, and thereby one shilling worth of the materials would by industry be multiplied to five, ten, and many times to twenty times more in the value being wrought.

7. And of all sort of thrift for the public good, I would above all others commend to your care the en-

couragement to be given to Husbandry, and the improving of lands for tillage: there is no such usury as this. The King cannot enlarge the bounds of these Islands, which make up his Empire, the Ocean being the unremovable wall which encloseth them, but he may enlarge and multiply the revenue thereof by this honest and harmless way of good husbandry.

8. A very great help unto Trade are navigable rivers, they are so many indrafts to attain wealth, whereby<sup>1</sup> art and industry let them be made, but let them not be turned to private profit.

9. In the last place, I beseech you take into your serious consideration that Indian wealth, which this island and the seas thereof excel in, the hidden and rich treasure of Fishing. Do we want an example to follow? I may truly say to the English, go to the pismire thou sluggard. I need not expound the text; half a day's sail with a good wind will show the mineral, and the miners.

10. To regulate all these it will be worthy the care of a subordinate Council, to whom the ordering of these things may be committed, and they give<sup>2</sup> an accompt thereof to the State.

VIII. Lastly, for the affairs of Court, you are much better able to instruct yourself than any man else can, much less than myself, who have scarce stept within the Court gates but as by chance and at the most as a stranger; yet in this also, I shall be bold to tell you my thoughts.

In the disposing of the offices and affairs of Court, the King hath a latitude for his affection, which in matters touching the public he must deny to himself: Here he is more properly *Paterfamilias*, in the other he is *Pater Patriæ*. There are many places in Court which a mere formal man may perform, because they are but as the

<sup>1</sup> So in the original. I think it should be "wherefore by."

<sup>2</sup> So in the original. Probably "and they to give," etc.

services of a private family, and in which the public hath little interest. And yet in these the choice had need be of honest and faithful servants, as well as of comely out-sides, who can bow the knee and kiss the hand, and perform other services of small importance compared to this of public employment. King David (Psalm 121) propounded a rule to himself for the choice of his courtiers; he was a wise and a good King, and a wise and a good King shall do well to follow such a good example, and if he find any to be faulty (which perhaps cannot suddenly be discovered) let him take on his<sup>1</sup> this resolution, as King David did, *There shall no deceitful person dwell in my house.* But for such as shall bear office in the King's house, and manage the expenses thereof, it is much more requisite to make a good choice of such servants both for his thrift and for his honor.

For your part, I shall wish that you would not interpose yourself much in these things, which are properly for the officers of the Household; that may draw too much envy upon you, and this would be too low for your thoughts (who will find enough to busy you about of a higher nature): Yet this will very well become you and your general trust, not to suffer the King to be too much abused, where your vigilance can prevent it. But then the way of doing it would be thus, to advertise the King of the defects, and then himself to find them out, rather as if it were by accident, than as prompted unto it.

In Court there are also some other requisites, which in their seasons may be thought upon; besides the serious affairs pertaining to government, which are many: Matter of pastime and disport are fit in their seasons, but if they shall be too common they will lose their repute, and become arguments of lightness rather than of recreation. Where there is a Queen and Lady<sup>2</sup> of Honor attending her person, sometimes to entertain them with Revels and

<sup>1</sup> So in original. I suppose "take on him."

<sup>2</sup> So in the original. It should apparently be "ladies."

Masks, are ornaments fit for a Court. Otherwise for a King or a young Prince who are active (and to be so commends them), sports abroad, and of more manly and useful deportment, as riding the great horse, the Tilt, the Barriers, the Tennis, etc., are more commendable. But neither in jest or earnest must there be countenance or ear given to flatterers or sycophants, the bane of all Courts. They are flies who will not only buzz about in every ear, but will blow and corrupt every place where they light.

Sir, I cannot flatter, I have dealt plainly and clearly with you, according to the freedom you have been pleased to afford me. I have but a word or two more to trouble you with.

You serve a gracious Master and a good, and there is a noble and a hopeful Prince, whom you must not disserve. Adore not him as the rising sun in such a measure, as that you put a jealousy into the father, who raised you ; nor out of the confidence you have in the father's affections, make not yourself suspected of the son ; keep an equal and a fit distance, so may you be serviceable to both, and deservedly be in the favor of both.

If you find in these, or in any other your observations (which doubtless are much better than these loose collections) anything which you would have either the father or the son to take to heart, an admonition from a dead author, or a caveat from an impartial pen, whose aim neither was nor can be taken to be at any particular by design, will prevail more and take better impression than a downright advice, which perhaps may be mistaken, as if it were spoken magisterially.

Thus may you long live a happy instrument for your King and Country : you shall not be a meteor, or a blazing star, but *stella fixa*, happy here, and more happy hereafter. *Deus manu sua te ducat*, thats the hearty prayer of,

Your most obliged Servant.



In the only copy of this tract which I have seen I can find no traces of any signature; but as a good deal of the edge has been cut off in the binding I cannot be sure that there never was one. The title-page (which I have not reproduced) informs us that it was printed in 1661, for R. H. and H. B. and was to be sold at Westminster and the Royal Exchange; and that it had never been printed before.

I have not corrected any *word* in it without notice. But in the spelling, the punctuation, and the employment of capital letters, I have used my own judgment. It is not probable that the spelling of the print represents that of the original manuscript: it comes so near to the modern form, that I have no doubt it was modernized by the printer and represents the ordinary orthography of 1661. And as for punctuation and capitals, they are governed by no principle of any kind, and would be very uncouth and perplexing to the reader of a modern book. The other version was first printed, I believe, in the Cabala in 1663, and is much enlarged and altered. But nothing is known about either more than can be gathered from themselves. Among Bacon's own papers there is no trace of any such composition. It is not noticed either by Rawley or Tenison; and if the thing itself had not been preserved, we should have had no reason to suppose that any such correspondence had passed. But it agrees very well with the known relation between the two men when they first became acquainted; and it is easier to imagine Bacon's motives for keeping it private at that time than to find another man to whom it could be probably attributed. At what time or times the second version was composed, and with what object — whether to provide a handsome occasion for *reminding* Villiers of the counsel formerly given, or to turn it into a specimen of a treatise *de negotiis gerendis*, or simply to satisfy the desire a man sometimes feels to complete an unfinished

or amend an imperfect work of his own hands, — must be left to conjecture. Any of these motives may have led Bacon to take it up at any time, and work it out according to its original form and intention.

Another of the most valuable of Bacon's occasional works — his proposition to the King touching the compiling and amendment of the laws of England — belongs to the period between June, 1616, and March, 1616-17. At what exact time within that period it was written or presented, I do not know how to determine. It may have been a work of the Long Vacation, or it may have been presented as a New Year's gift. But no date is needed to account for or explain it. Indeed, it may be doubted whether it ought to be classed among the "occasional works" at all; for the occasion to which it addresses itself was coëxtensive with his adult life. Since he was a man there had been no time which did not furnish occasion for the desire, if not the endeavor, to see the laws of England digested into an intelligible and manageable code. In his first speech in Parliament of which we have any detailed report (26 February, 1592-93), though its business was to support a motion for supply, he took occasion from a remark dropped by the Lord Keeper on the multiplicity of the existing laws, to enlarge (in terms which, as far as we can judge from the imperfect report, were substantially the same as the commencement of this paper) upon the importance of reducing and abridging them.<sup>1</sup> In his "Promus of Formularies and Elegancies," which was begun at the commencement of the Christmas vacation of 1594, we find among other quotations, applicable, though not complimentary, to the condition of the law, the following note: "*Jurisconsulti domus, oraculum civitatis*; now as ambiguous as oracles." A few weeks after, in the playful device which he contributed to the Christmas

<sup>1</sup> See above, vol. i., p. 74.

revels at Gray's Inn, he put the same topic into the mouth of one of the councillors of the Prince of Purpoole, whose part was to "advise virtue and a gracious government." "Then look into the state of your laws and justice of your land: purge out multiplicity of laws: clear the incertainty of them: repeal those that are snaring; and press the execution of those that are wholesome and necessary: define the jurisdiction of your courts:"<sup>1</sup> etc. In January, 1596-97, he dedicated to Queen Elizabeth the first sample of his "Maxims of the Law," — a collection of the principal Rules and Grounds of Law dispersed through the whole body of decided cases — a collection which he meant to be his great contribution to the science of his profession, and a principal auxiliary in the work of law reform; and again in his dedication took occasion to magnify the importance and beneficence of that work. "But I am an unworthy witness to your Majesty of a higher intention and project, both by that which was published by your Chancellor in full Parliament from your royal mouth in the five-and thirtieth of your happy reign," — this was the passage to which he had alluded in his speech in Parliament, on the 26th of February, 1592-93, — "and much more in that which I have since been vouchsafed to understand from your Majesty, importing a purpose for these many years infused in your Majesty's breast, to enter into a general amendment of the state of your laws, and to reduce them to more brevity and certainty; that the great hollowness and unsafety in assurances of lands and goods may be strengthened; the snaring penalties that lie upon many subjects removed; the execution of many profitable laws revived; the judge better directed in his sentence; the counsellor better warranted in his counsel; the student eased in his reading; the contentious suitor that seeketh but vexation disarmed, and the honest suitor that seeketh but to ob-

<sup>1</sup> See above, vol. i., p. 152.

tain his right relieved : which purpose and intention, as it did strike me with great admiration when I heard it, so it must be acknowledged to be one of the most chosen works, of highest merit and beneficence towards the subject, that ever entered into the mind of any king. . . . and as it is no doubt a precious seed sown in your Majesty's heart by the hands of God's divine majesty, so I hope in the maturity of your own times it will come up and bear fruit." On the 28th of March, 1607, speaking in the House of Commons on the benefits that would follow a union of laws between England and Scotland, he observed that the means to the work would be as excellent as the work itself : " for if both laws shall be united, it is of necessity for preparation and inducement thereunto that our own laws be reviewed and recompiled : than the which I think there cannot be a work that his Majesty can undertake in these his times of peace, more politic, more honorable, nor more beneficial to his subjects in all ages. . . . For this continual heaping up of laws without digesting them maketh but a chaos and confusion, and turneth the laws many times to become but snares for the people, as was well said, *Pluet super eos laqueos : non sunt autem pejores laquei quam laquei legum*. And, therefore, this work I esteem to be indeed a work (rightly to term it) heroical, and that which, if I might live to see, I would not desire to live after." On the 28th of July, 1608, in a sheet of private memoranda concerning " Policy," we find these : —

" Persuade the King in glory, *aurea condet sæcula*.

" New laws to be compounded and collected : lawgiver *perpetuus princeps*."

The next day, " the recompiling of the laws of England " is set down in a list of his own " services on foot." And it was probably in pursuance of the design here indicated that he addressed or thought of addressing a letter to the King, of which all we have and all we know is

the unfinished draft which follows; and the date must remain altogether uncertain, because such a letter, referring as it does to a subject which was never absent from his thoughts, might have been begun at any time.

“MAY IT PLEASE YOUR MAJESTY,—Thinking often, as I ought, of your Majesty’s virtue and fortune, I do observe, not without admiration, that those civil acts of sovereignty which are of the greatest merit, and therefore of truest glory, are by the providence of God manifestly put into your hands, as a chosen vessel to receive from God, and an excellent instrument to work amongst men, the best and noblest things. The highest degree of sovereign honor is to be the founder of a kingdom or estate; for as in the acts of God the creation is more than the conservation, and as amongst men the birthday is accounted the chiefest of the days of life, so to found a kingdom is more worthy than to augment or to administer the same. And this is an honor that no man can take from your Majesty, that the day of your coming to the crown of England was as the birthday of the kingdom intire Britain. The next degree of sovereign honor is the plantation of a country or territory, and the reduction of a nation from waste soil and barbarous manners to a civil population. And in this kind also your Majesty hath made a fair and prosperous beginning in your realm of Ireland. The third eminent act of sovereignty is to be a lawgiver; whereof he speaketh,

*Pace datâ terris, animum ad civilia vertit*

*Jura suum, legesque tulit justissimus author.*

And another saith, *Ecquid est, quod tam propriè dici potest actum ejus qui togatus in republicâ cum potestate imperioque versatur, quam lex? Quære acta Gracchi, leges Semproniae proferentur: quære Syllæ, Cornelie. Quid? Cneii Pompeii tertius consulatus in quibus actis consistit? Nempe legibus. A Cæsare ipso si quæreres*

quidnam egisset in urbe et toga, leges multas se respondeat et præclaras tulisse."

In the Parliament of 1614, among the Bills of Grace offered to the houses, was "an act giving authority to certain Commissioners to review the state of penal laws, to the end that such as are obsolete and snaring may be repealed, and such as are fit to continue and concern one matter may be reduced respectively into one clear form of law." It was brought in by Bacon and read a first time on the 2d of May. Upon the premature dissolution of that Parliament, he urged the King (his position giving him then more opportunities of offering advice) to appoint Commissioners accordingly, who might prepare bills for the next Parliament; to set on foot at once a revision and expurgation of the "Year books," which contained the history of the law for the time past, and at the same time to appoint competent reporters of all legal cases for the time to come. And now on his further rise to the dignity of a Privy Councillor he makes it his first voluntary service to draw attention to the subject once more, entering more particularly into a consideration of the measures to be taken.

Like other of his greater projects for the benefit of mankind, it was well meant and well aimed, rather than successful. But subsequent history, if it shows that his persuasions and endeavors produce little effect in the way of remedy, shows likewise how much that very remedy was wanted, and how much the disease has been aggravated and made more difficult to deal with by the postponement of it. One advantage there is, indeed, which modern law-reformers enjoy over their predecessors in this matter, — a universal feeling that the remedy must be postponed no longer. If the task is heavier than it was in Bacon's time, the forces at our command are greater. Instead of a single councillor to urge, and a

single king with an empty exchequer to provide means, we have now all the highest officers of State and Law, with the full support of both houses of Parliament, of the Press, and of the people, recognizing the paramount importance of the work, and seriously bent on getting it done. We may fairly hope, therefore, that in the course of another generation or two the obstructions will be withdrawn or over-ridden, and the work accomplished. Whenever that shall be, the credit will of course go to the man who happens to be most conspicuous among those who are in the field when it is won. But when its history is written, there will remain on record a remarkable testimony to the value of this early contribution of Bacon's to the cause. For when, on the 9th of March, 1826, the late Sir Robert Peel, then Home Secretary, moved for leave to bring in his bill for the consolidation of the laws relating to theft, he asked permission to use this very paper for the preface of his speech, as comprising in a short compass every argument that could be cited in favor of the measure he proposed to introduce, and satisfactorily confuting every objection that could be brought against it. "The lapse of two hundred and fifty years has increased," he said, "the necessity of the measure which Lord Bacon then proposed, but it has produced no argument in favor of the principle, no objection adverse to it, which he did not anticipate."

We left Sir Edward Coke at the beginning of the Long Vacation, temporarily suspended from the exercise of his office of Chief Justice, and ordered to review his Reports, to correct anything in them that he might find requiring correction, and to communicate the result privately to the King.

A few days before the beginning of the next term, the King directed the Lord Chancellor and the Attorney General to call upon him for an account of what he had done. On the 2d of October he appeared before

them, and the following letter gives their report of what passed : —

THE LORD CHANCELLOR AND THE ATTORNEY GENERAL  
TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY,—  
This morning, according to your Majesty's commandment, we have had my Lord Chief Justice of the King's Bench before us, we being assisted by all your learned counsel, except Serjeant Crew, who was then gone to attend your Majesty. It was delivered unto him, that your Majesty's pleasure was, that we should receive an account from him of the performance of a commandment of your Majesty laid upon him, which was that he should enter into a view and retractation of such novelties and errors and offensive conceits as were dispersed in his Reports ; that he had had good time to do it ; and we doubted not but he had used good endeavor in it, which we desired now in particular to receive from him.

His speech was, that there were of his Reports eleven books that contained about five hundred cases : that heretofore in other Reports, as namely those of Mr. Plowden (which he revered much) there hath been found nevertheless errors which the wisdom of time had discovered and later judgments controlled ; and enumerated to us four cases in Plowden which were erroneous ; and thereupon delivered in to us the inclosed paper, wherein your Majesty may perceive that my Lord is an happy man, that there should be no more errors in his five hundred cases than in a few cases of Plowden. Your Majesty may also perceive that your Majesty's direction to my Lord Chancellor and myself, and the travail taken by us and Mr. Solicitor in following and performing your direction, was not altogether lost ; for that of those three heads which we principally respected, which were the rights and liber-



ties of the church, your prerogative, and the jurisdiction of other your courts, my Lord hath scarcely fallen upon any except it be the Prince's case, which also yet seemeth to stand but upon the grammatical of French and Latin.

My Lord did also [qualify<sup>1</sup>] his promise, which your Majesty shall find in the end of his writing, thus far in a kind of common-place or thesis, that it was sin for a man to go against his own conscience, though erroneous, except his conscience be first informed and satisfied.

The Lord Chancellor in the conclusion signified to my Lord Coke your Majesty's commandment, that until report made and your pleasure thereupon known he shall forbear his sitting at Westminster, etc., not restraining nevertheless any other exercise of his place of Chief Justice in private.

Thus having performed, to the best of our understanding, your royal commandment, we rest ever

Your Majesty's most faithful, and  
most bounden servants.

This joint letter appears to have been accompanied with another from Bacon either to the King or Villiers, in which he recommended the course to be now taken in the matter. But this has unluckily been lost, and the substance of the advice can only be gathered imperfectly from the King's remarks in answer. A loss much to be regretted; for the question was important and difficult. Up to this point Coke had been dealt with cautiously and prudently. The acts previously selected for censure had been acts of aggression, obstruction, and disturbance. Having been called on to justify them before the Council,

<sup>1</sup> There is no word between "also" and "his" in the MS. Birch, finding the sentence imperfect, put in "give," without notice; and "my Lord did also give his promise" has been the reading in all editions since. I do not think it can be the right word. I have substituted "qualify,"—not as being probably Bacon's own word, for I think it more probable that several have dropped out,—but as giving what was probably the sense.

and failed, he had been brought to acquiesce (however ungraciously) in an order that they should not be repeated ; and so far the wound was healed. The “novelties, errors, and offensive conceits dispersed in his Reports” were more difficult to deal with, being expressions of opinion on points of law, and Coke’s opinions in such matters being likely to outweigh in popular estimation those of any authority who might undertake to censure them. That erroneous opinions published in a book *might* be a fit subject of censure and punishment would not, I suppose, have been disputed. The offense of Dr. Cowell, which caused such excitement in the House of Commons in 1610, was quite analogous, only that it came from the other side. Dr. Cowell, Regius Professor of Civil Law in the University of Cambridge, having published a law-dictionary, — a book professing to set forth the true meaning of all words used in legal writings, — was found by the House of Commons in some of his definitions to have expressed or implied opinions inconsistent with the privileges of the House of Commons. Coke, having published reports of a number of cases decided in the courts of law, was found by the King, the Archbishop, and the Lord Chancellor, to have set down as law doctrines inconsistent with the rights of the Crown, the Church, and the Courts. Dr. Cowell’s dictionary had been, at the instance of the House of Commons, by authority of the King, immediately and peremptorily suppressed. Coke was treated more respectfully. Before any objection was made, opportunity was given him to correct or withdraw anything objectionable. But when he had corrected everything that he found amiss, there still remained many passages to which it was thought that just objection might be taken : and the question was how these were to be dealt with.

From the King’s reasons — as reported by Villiers in the following letter — for disliking Bacon’s advice I gather

*Bacon*  
 that *he* had suggested a course similar to that which he had advised in the case of the Commendams and the Præmunire: a declaration of the whole case before the Council, in the presence probably of the Judges, followed by a formal application for their opinion and advice. Such a proceeding would at any rate have left no room for doubt as to the true grounds upon which the action was taken; and if the advice of the Council had been freely given and duly followed, it might have carried weight enough to bear out the conclusion, even in the opinion of the people, and even though it implied that Coke in his own special province was not infallible. Less than this could hardly be expected to outweigh the obvious popular presumption that he was paying the penalty of his virtue. The King, however, preferred to take a more summary course, and directed Villiers to return Bacon the following answer: —

TO THE RIGHT HONORABLE SIR FRANCIS BACON, KNT., HIS  
 MAJESTY'S ATTORNEY GENERAL, AND OF HIS MOST HONORABLE  
 PRIVY COUNCIL.

SIR, — I have acquainted his Majesty with my Lord Chancellor's and your report touching my Lord Coke as also with your opinion therein; which his Majesty doth dislike for these three reasons: first, because that by this course you propound the process cannot have a beginning till after his Majesty's return, which how long it may last after no man knoweth; he therefore thinketh it too long and uncertain a delay to keep the bench so long void from a Chief Justice. Secondly, although his Majesty did use the Council's advice in dealing with the Chief Justice upon his other misdemeanors, yet he would be loth to lessen his prerogative in making the Council judges whether he should be turned out of his place or no, if the case should so require. Thirdly, for that my Lord Coke hath sought means to kiss his Majesty's hands and withal to acquaint him with some things of great importance to his service, he holdeth it not fit to admit him to his presence, before these points be determined, because

that would be a grant of his pardon before he had his trial. And if those things wherewith he is to acquaint his Majesty be of such consequence, it would be dangerous and prejudicial to his Majesty to delay him too long. Notwithstanding, if you shall advise of any other reasons to the contrary, his Majesty would have you with all the speed you can to send them unto him, and in the mean time to keep back his Majesty's letter which is herein sent unto you from my Lord Coke's knowledge, until you receive his Majesty's further direction for your proceeding in his business. And so I rest,

Your ever assured friend at command,

GEORGE VILLIERS.

THEOBALDS, the 3d of October, 1616.

Of the letter from the King himself to the Lord Chancellor and Bacon which went along with this, I have not met with any copy or account; only I gather from the answer which was returned to both letters that it was not acted upon at the time.

#### TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — We have considered of the letters which we received from your Majesty, as well that written to us both, as that other written by my Lord Villiers to me the Attorney, which I thought good to acquaint my Lord Chancellor withal; the better to give your Majesty satisfaction. And we most humbly desire your Majesty to think that we are and ever shall be ready to perform and obey your Majesty's directions; towards which the first degree is, to understand them well.

In answer therefore to both the said letters, as well concerning matter as concerning time, we shall in all humbleness offer to your Majesty's wisdom the considerations following: —

First, we did conceive, that after my Lord Coke was sequestered from the table and his circuits, when your

Majesty laid upon him your commandment for the expurging of his Reports, and commanded also our service to look into them and into other novelties introduced into the government, your Majesty had in this your doing two principal ends.

The one, to see if upon so fair an occasion he would make any expiation of his former faults, and also show himself sensible of those things in his Reports which he could not but know were the likeliest to be offensive to your Majesty.

The other to perform *de vero* this right to your crown and succession, and your people also; that those errors and novelties might not run on and authorize by time, but might be taken away, whether he consented to it or no.

But we did not conceive your Majesty would have had him charged with those faults of his book, or those other novelties; but only would have had them represented to you for your better information.

Now your Majesty seeth what he hath done, you can better judge of it than we can; if upon this probation, added to former matters, your Majesty think him not fit for your service, we must in all humbleness subscribe to your Majesty, and acknowledge that neither his displacing (considering he holdeth his place but during your will and pleasure) nor the choice of a fit man to be put in his room, are council-table matters, but are to proceed wholly from your Majesty's great wisdom and gracious pleasure. So that in this course, it is but the signification of your pleasure, and the business is at an end as to him; only there remaineth the actual expurgation or animadversions of the books.

But if your Majesty understand it that he shall be charged; then, as your Majesty best knoweth, justice requireth that he be heard and called to his answer; and then your Majesty will be pleased to consider before

whom he shall be charged; whether before the body of your Council (as formerly he was), or some selected commissioners (for we conceive your Majesty will not think it convenient it should be before us two only). Also the manner of his charge is considerable, whether it shall be verbal by your learned counsel (as it was last); or whether, in respect of the multiplicity of matters, he shall not have the collections we have made in writing delivered to him. Also the matter of his charge is likewise considerable, whether any of those points of novelty which by your Majesty's commandment we collected, shall be made part of his charge; or only the faults of his books, and the prohibitions and *habeas corpus*, collected by my Lord of Canterbury. In all which course we foresee length of time, not so much for your learned counsel to be prepared (for that is almost done already), but because himself no doubt will crave time of advice to peruse his own books, and to see whether the collections be true and that he be justly charged, and then to produce his proofs that those things which he shall be charged with were not conceits or singularities of his own, but the acts of court; and other like things, tending to excusation or extenuation; wherein we do not see how the time of divers days, if not of weeks, can be denied him.

Now for time (if this last course of charging him be taken), we may only inform your Majesty thus much, that the absence of a Chief Justice (though it should be for a whole term<sup>1</sup> as it hath been often upon sickness) can be no hindrance to common justice; for the business of the King's Bench may be dispatched by the rest of the Judges, his voice in the Star Chamber may be supplied by any other Judge that my Lord Chancellor shall call, and the trials by *nisi prius* may be supplied by commission.

<sup>1</sup> In the MS. the parenthesis ends here: but I think it must have been meant to include the next clause.

But as for those great matters of discovery, we can say nothing more than this, that either they are old or new: if old, he is to blame to have kept them so long; if new, or whatsoever, he may advertise your Majesty of them by letter, or deliver them by word to such councillor as your Majesty will assign.

Thus we hope your Majesty will accept of our sincerity, having dealt freely and openly with your Majesty, as becometh us: and when we shall receive your pleasure and direction, we shall execute and obey the same in all things; ending with our prayers for your Majesty, and resting

Your Majesty's most faithful, and  
most bounden servants,

T. ELLESMERE CANC.

FR. BACON.

October 6, 1616.

The delay which followed may perhaps be partly accounted for by the influence of Villiers, whose good will Coke had bespoken by the offer of a wealthy marriage to one of his brothers. But the difficulty and importance of the case was itself cause sufficient for hesitation. What course Ellesmere and Bacon would themselves have recommended it is not easy to make out. Their last joint letter is worded with great caution and an evident intention to decline the responsibility of advising. But there is one thing which I think we may infer with confidence. They did not regard the exceptions taken to Coke's Reports as in themselves frivolous. Having examined and considered and collected the passages in question, they were of opinion that doctrines were implied in them which ought not to remain unquestioned in a book of that authority. How far they were justified in thinking so is a question for lawyers, and it is true that among modern lawyers there has been a very general impression to the contrary. But general impressions are apt to pass from

one mouth or pen to another without much consideration, and they would have more weight with me if I could be more sure that they had been founded upon an examination by some competent critic of the particular cases. It is too lightly assumed that because Coke was the greatest lawyer of his time, the soundness of his legal decisions may be taken for granted: for where a man's temper is not judicial, his learning will supply him with reasons for the wrong conclusion as easily as for the right; and the blindest admirer of Coke's gifts will hardly say that he was gifted with a judicial temper.

The King, it seems, was not disposed to trouble himself with the solemn proceeding indicated by Bacon. He was satisfied with the report of his Chancellor, Attorney, and Solicitor, whom he had required to make a collection in writing of the unwarrantable opinions maintained by Coke in his Reports and otherwise, and felt justified in proceeding upon that evidence. Hence the question was never sufficiently investigated, or even explained; and the people were left to make their own guesses at the secret history of the business; which guesses, in the absence of better information, have been adopted by historians and generally accepted. "The world discourses," says Chamberlain, "how he should run so far into the King's displeasure, and will not take those alleged causes for sound payment, but stick not to say that he was too busy in the late business, and dived further into secrets than there was need, and so perhaps might see *nudam sine veste Dianam*." Such comments were natural enough from people who knew nothing about Coke except his reputation for learning and independence, and the part he had publicly taken against the murderers of Overbury. But the whole course of the King's subsequent dealing with him was inconsistent with the supposition that he feared him as the possessor of a dangerous secret: for he took no measures to tie his tongue, and yet he gave him



a provocation which might have tempted him to use it. And there is really no reason to go about for an explanation of what happened. To those who know how severely and for how many years Coke had tried the King's patience, the wonder should be that he was borne with so long. When two men, one so irritating and the other so irritable, are coming continually into collision upon a quarrel which each holds it his first duty to maintain, — for to assert the just supremacy of the Law (as represented by himself) was not a more sacred duty in Coke's eyes than to assert the just prerogative of the Crown was in the King's, — and when one of them holds only during the other's pleasure the office which gives him a right to be troublesome, the time must come when the relation will cease to be tolerable. The King had endured it so long that the list of offenses had grown large. It is true that, large as it is, the amount seems to us light; because the *object* in each case, even where neither manner nor matter can be altogether defended, was to clip the wings of the Prerogative, which we are accustomed to regard as the enemy of the Constitution. We forget that in the King's eyes the Prerogative was itself a part of the Constitution — a part which, as an inheritance to be transmitted, it was his proper business to defend, and of which every attempt to clip its wings was a betrayal. To justify him in removing Coke from his office on this ground, it is not necessary to sympathize with him in his constitutional theory; it is only necessary to believe that he conscientiously held it. The man to whom the law entrusts the power of removing an officer at pleasure, is the man whom the law makes responsible for the consequences of continuing him in his office. If the King thought that Coke was using his place to make mischief, it was his duty to displace him, if he durst.

Another popular comment made at the time, and also reported by Chamberlain, comes much nearer to the truth:

“The common speech is, that four P’s have overthrown and put him down, that is, Pride, Prohibitions, Præmunire, and Prerogative.” And this I think may really be allowed as a fair summary of the charges publicly alleged by the King as the ground of his removal. Our account indeed of the declaration made on the occasion is imperfect; but we have a copy of the collections on which it was founded, and from these the character of the supposed offenses may be safely inferred.

Among the manuscripts of Mr. Laughton, of Cambridge, which passed after his death into the hands of Mr. George Paul, there was one entitled “The Lord Chancellor Egerton’s Observations on the Lord Coke’s Reports; taken out of his Papers written with his own Hand.” It does not appear by whom or upon whose authority the title was inserted; but Mr. Paul came to the conclusion that it was probably correct, and printed the entire paper. It fills twenty-two folio pages of black-letter type; and whether or not it be the Chancellor’s own composition, there can be little doubt that it is one of the collections alluded to by Bacon, as having been drawn up for this occasion by the King’s direction. The questions with which it deals are too technical for me to offer an opinion upon. I could not hope even to state them without making blunders. But the general charge is intelligible enough. He is accused of laboring “as it were purposely” throughout his books to derogate from the rights of the Church, and “to disesteem and weaken the power of the King in the ancient use of his Prerogative;” and that, by setting down as resolutions of the Court what were really only opinions thrown out by the Judges on the sudden, or “by taking occasion (though not offered) to range and expatiate upon bye-matters,” and so “scattering and sowing his own conceits.” The cases cited by way of example are ranged under four principal heads: cases concerning (1) the rights of the

Church; (2) the Prerogative of the King; (3) the power and jurisdiction of Courts and Commissioners; and (4) the interest of the subject. Four or five cases are quoted in illustration of each head. They are succinctly stated in legal phraseology, and followed by short comments explaining the error implied in each case in the report. The errors pointed out are thirty in all, but they are given only "as a taste"; and were drawn up not with a view to a judicial proceeding against Coke, which the collectors evidently did not contemplate, nor in the hope of extracting a confession of error from himself, but only for the King's information, as bearing upon the question of his fitness for the place he held, and as suggesting the expediency of a revision by authority of his book of Reports. It seems doubtful whether Bacon expected them to be referred to Coke at all; but the King, who was always ready to hear what a man had to say, having already given him the opportunity of discovering and correcting his errors without a prompter (which was the handsomest way), and finding that he had passed without notice the points which seemed most objectionable, thought it right before proceeding further to have his attention particularly drawn to them. Accordingly, on the 17th of October, he was called again before the Lord Chancellor and the learned Counsel, and informed that the King "out of his gracious favor was pleased that his memory should be refreshed; and that he should be put in mind of some passages dispersed in his books, which his Majesty being made acquainted with did as yet distaste, until he heard his explanation and judgment concerning the same. And that out of many some few should be selected, and that at this time he should not be pressed with more; and those few not to be the special and principal points of the cases which were judged, but things delivered by discourse, and as it were by expatiation, which might have been spared and

forborne without prejudice to the judgment in the principal cases." The selection was made by Bacon and Yelverton, who chose five. Of which the first was thought to imply a denial of the power of the Commissioners of Sewers to tax a town for the repair of the sea-banks; the second, a denial of the power of the Crown to grant a license of sole importation, *non obstante* the statute; the third, a denial of the power of the High Commission, the Provincial Councils, the Admiralty, the Court of Requests, and even the Council Table itself, to "imprison, fine, or amerce;" the fourth to assert the power of the Common Law to control Acts of Parliament, and judge them void, as against common right and reason; the fifth, to give a degree of authority to the King's Bench which would make it "all-sufficient in itself to manage the state," making the authority of the King, the Council, and the Star Chamber superfluous, and giving it "a superintendency over the government itself, and to judge wherein any of them do misgovern."

The passages in his Reports supposed to contain these things being laid before him, he undertook to explain them all "in such sort that no shadow should remain against his Majesty's prerogative," and having received copies of the words, took them home, and on the 21st of October returned his "humble and direct answer" in each case.

If the movement was meant for an offensive one, it was a failure. But if it was meant in good faith as a precaution, — a precaution which ought never in any case to be omitted, that of hearing the explanation before pronouncing the censure — and so I think it was, — it answered its purpose very well, and the result was in one way satisfactory. I do not suppose indeed that it satisfied either Ellesmere or Bacon that the passages in question did not really imply and were not meant to imply the opinions which they had found in them; but it extracted from

Coke a distinct disavowal of those opinions. In every case but one he denied that his words either did imply or were meant to imply any such thing. He was still of opinion that the Act did not authorize the Commissioners of Sewers to raise money, even in a sudden emergency, "by taxation of an entire sum in gross upon a town." But he fully admitted the right of the King to grant licenses of sole importation, *non obstante* the statute. He declared that his assertion that "some Courts cannot imprison," etc., applied only to the inferior Ecclesiastical Courts; that his assertion of the power of the Law to control Acts of Parliament consisted only in a reference to cases in the books where Acts of Parliament had in fact been adjudged void by the common law, — cases which had been cited in the argument and which he had found to be truly avouched; and lastly, that where he said that the King's Bench had authority to correct "misgovernment" he meant only the misgovernment of inferior magistrates, and was willing to have those words inserted.

Though the disavowal of an opinion made by Coke in such circumstances did not perhaps afford a very strong assurance that he would not be found fighting for it another time, it was a caution against laying too much stress upon the supposed heresies of his book of Reports. But the strength of the case did not lie there. The "expatiations" in his Reports were but collateral and confirmatory evidences, — the flash and outbreak of the spirit of opposition in which he had been acting ever since he became a Judge. The solid ground of complaint against him was that he had habitually used the authority of his office to interfere with the action of the government in its other departments. When the best horse in the team cannot be persuaded to pull with the others, the coach will go better without him. Those who sympathize most entirely with Coke in all his conflicts will hardly main-

tain that *in the way the government was going* he was not a danger and a hindrance. And whatever *we* may think now, there is no doubt that the King and his advisers thought that the way they were going was the right one. The true justification of the proceeding, from their point of view, is contained in another paper, entitled "*Innovations introduced into the Laws and Government:*" of which there is a copy at Lambeth. It bears no date, but appears to have been drawn up after the promulgation of the King's decree in the *Præmunire* case, — therefore after the 18th of July. The heads are set out on one side of the page, mostly in the hand of a secretary. The comments are inserted in the half-margin opposite, in Bacon's hand. The title also, and the numbers (which are directions for setting out the heads in a different order) are Bacon's. There can be no doubt therefore as to the authenticity of the paper, and not much doubt that it was a draft of that which went to the King. The statements in it were, I suppose, matters of notoriety: the points in dispute having been discussed at Council or in the Star Chamber, or embodied in orders of the Court.

The Innovations alleged in this paper were the grounds upon which it was urged that Coke was not the right man for his present place. According to modern ideas, his defects, both of temper and judgment, as well in the getting up as in the trial of criminal cases, would have formed a better reason; but they would not have been thought so then. Such as they were, the King made up his mind that they were sufficient, and on the 10th of November declared to the Council his resolution to remove him from the Bench. Of what he said on the occasion I have not met with any account full enough to explain the precise grounds on which he put it; but all reports agree that he used him with respect. He had already, on hearing that he had been treated with discour-

tesy by "the Lord Chancellor's men," sent word "that he would have him well used;" and it had then been hoped by his admirers that things were taking a turn in his favor. "The Attorney" (says Chamberlain, 26 October) "is thought to be come about, as well for that he ever used him with more respect than the rest, as for divers speeches he gives out in his favor, — as that a man of his learning and parts is not every day found nor so soon made as marred." But whatever his faults were, they were not of a kind to justify disrespectful treatment from anybody; and the King when he informed the Council of his resolution to remove him, "yet gave him," says Chamberlain, "this character, that he thought him no way corrupt, but a good justicer; with so many other good words, as if he meant to hang him with a silken halter." It is rather strange that more curiosity should not have been felt as to the reasons which the King gave for such a measure. But this is all that Chamberlain knew, or all that he cared to tell Carleton, about his speech; nor is there any fuller report, so far as I know, in existence.

It now remained only to set at rest the doubts which had been raised on the Reports. In his declaration to the Council the King, it seems, had given directions for a commission to review them; and a warrant to certain Judges for that purpose was drawn up by Bacon, and ready for his signature by the 21st of November. And here we may leave Coke for a while to himself. We shall meet him again before long in a new occupation, if not in a new character; but for the present he retires to his daughter Sadler's, and applies himself to win the favor of the Favorite.

## CHAPTER II.

A. D. 1616-1617. NOVEMBER-JULY. ÆTAT. 56-57.

IN his "discourse on the plantation of Ireland,"—presented to the King in January, 1608-9, when a large portion of the lands in Ulster had recently fallen to the disposal of the Crown,—Bacon gives his opinion of the kind of persons whom it would be desirable to engage as planters, or "undertakers," as they were then called, and the kind of attractions which it would be necessary to offer in order to allure them. The persons, he thinks, should not be needy adventurers, but "men of estate and plenty." For such persons the prospect of "honor and countenance" would have chief attraction; and among other honors which might be attached to the enterprise, he suggests "knighthood, with some new difference and precedence."

It was, if not in compliance, at least in accordance with this suggestion, that in the beginning of 1611 the order of Baronets was instituted: an order which was to be hereditary; to give rank, precedence, and title, without privilege; to be limited in numbers; and to consist entirely of gentlemen of good family and estate, who should bind themselves to pay into the Exchequer a sum sufficient to maintain thirty foot soldiers in Ireland for three years, at the same time declaring on oath that they had not directly or indirectly paid anything else for the honor. To insure the appropriation of the money so paid to the service of the new plantation, the Treasurer was specially instructed to keep it apart by itself, that it might



be "wholly converted to that use for which it was given and intended." The earliest patents were issued on the 22d of May, 1611, while Salisbury was still living, and Bacon only Solicitor; and though the first of these Baronets was his own half-brother, it is not probable that he had anything to do with the measure at that time, unless possibly his pen was used in drawing the patent. But questions arose afterwards on points of privilege and precedence, and a petition of certain Baronets for explanation and declaration, being presented to the King about this time, was referred by him to Bacon for his report. Of this report I find a copy at Lambeth, corrected and signed by Bacon himself, and docketed in Meauty's hand, "A certificate for the Baronets:" but without any date. I have thought this the right place for it, because I find from the calendar of State papers that on the 10th of March, 1616-17 there issued under the sign manual "Letters Patent declaratory of the dignity of baronet as a mean rank between barons and knights, declaring their precedence, and that of their wives, sons, and daughters, over knights, and promising knighthood to the heir of any baronet on attaining his majority:" and this I suppose to have been the King's answer to the petition which was the subject of the following report:—

#### TO THE KING.

MAY IT PLEASE YOUR MAJESTY, — According to your Highness' pleasure signified by my Lord Chamberlain,<sup>1</sup> I have considered of the petition of certain baronets made unto your Majesty for confirmation and extent or explanation of certain points mentioned in their charter; and am of opinion, —

That first, whereas it is desired, that the baronets be declared a middle degree between baron and knight, I hold this to be reasonable as to their placing.

<sup>1</sup> William, Earl of Pembroke.

Secondly, where it is desired that unto the words *degree or dignity of baron*, the word *honor* might be added, I know very well that in the preface of the baronets' patent it is mentioned that all honors are derived from the King. I find also, that in the patent of the Baneretts, which are marshaled under the baronets (except it be certain principals),<sup>1</sup> the word *honor* is granted. I find also that the word *dignity* is many times in law a superior word to the word *honor*, as being applied to the King himself, all capital indictments concluding *contra coronam et dignitatem nostram*. It is evident also that the word *honor* and *honorable* are used in these times in common speech very promiscuously; nevertheless, because the style of honor belongs chiefly to peers and counsellors, I am doubtful what opinion to give therein.

Thirdly, whereas it is believed that if there be any question of precedence touching baronets it may be ordered that the same be decided by the commissioners marshal, I do not see but it may be granted them for avoiding disturbances.

Fourthly, for the precedence of baronets, I find no alteration or difficulty, except it be in this, that the daughters of baronets are desired to be declared to have precedence before the wives of knights' eldest sons; which because it is a degree hereditary, and that in all examples the daughters in general have place next the eldest brothers' wives, I hold convenient.

Lastly, whereas it is desired that the apparent heirs males of the bodies of the baronets may be knighted during the life of their fathers; for that I have received from the Lord Chamberlain a signification, that your Majesty did so understand it, I humbly subscribe thereunto; with this, that the baronets' eldest sons being knighted do not take place of ancient knights, so long as their fathers live.

<sup>1</sup> Precedence was given to the baronet above all bannerets, except those who were made in the field, under the banner, the King being present.

All which nevertheless I humbly submit to your Majesty's better judgment.

Your Majesty's most humble

and most bounden servant,

FR. BACON.

This institution of the order of Baronet is commonly spoken of as a disgraceful proceeding on the part of the King. Why, I have never been able to understand or conjecture. The object was a good one; the conditions were open and honorable; the persons selected were no way unfit or disreputable; the order itself has never fallen into disgrace. To invite contributions and other assistance towards the settlement and civilization of what was then the most unsettled part of Ireland from the class of persons likeliest to do the work effectually, cannot be considered an unworthy act on the King's part. To belong to a family which had borne arms for three generations, to have an estate worth £1,000 a year in land, to undertake to pay into the Exchequer £1,080 on the special condition that it should be appropriated to the maintenance of order in Ireland, and to receive in return a titular distinction and certain rights of precedence for themselves and their heirs male, with an assurance that the number of persons, on whom it should be conferred should be limited to two hundred, cannot be considered as in any way discreditable to the parties dealt with. And if it is true (as it may or may not be) that the Baronets as a body did not play any conspicuous part in the reclamation of Ulster from barbarism, but that their main service was the contribution of the money at the beginning, it is true also that as a body they have flourished and continue to flourish in honor and importance—an order of men much respected, and (though no longer limited in numbers) retaining its full value in public estimation; an order into which men otherwise

honorably distinguished think it an additional distinction to be admitted; while those who succeed to it by inheritance are so far from being ashamed of its origin, that they value their title the more the further they can trace it back. Why should a tree which bears such fruit be reckoned a discredit to the planter? I can only suppose that the opinion was first thrown out by somebody who knew that the payment of money was a condition of the patent, but did not know what it was for or upon what conditions it was received; and that the rest have followed the lead — as people do. It would not be the only instance in which a sneer of Sir Anthony Weldon's translated into the decorous language of respectable historians has taken its place as the judgment of posterity.

Among the affairs which the King had to despatch before he set out on his journey to Scotland, was the communication to his Council of the progress of the negotiation for a marriage between Prince Charles and the Infanta of Spain. This was an affair with which Bacon had hitherto had nothing to do. It is doubtful whether he even knew, otherwise than by rumor, that such a negotiation was on foot. But he was now one of a selected number of Privy Councillors whose advice was to be taken upon it, and in order to understand the conditions under which their advice was given it will be necessary to explain what had been done in it up to this time.

The project of a marriage between the Prince of Wales and the Infanta had been first moved from Spain in 1604, just after the conclusion of the treaty of peace; but with a condition which could not be listened to, — namely, that Prince Henry, still a little boy, should be not only brought up a Catholic, but sent to Madrid for his education. It was renewed again on the part of England after the dissolution of the Parliament in 1610, with a view no doubt to the relief of the Exchequer by the marriage-portion; but upon an intimation that the Prince must

first become a Catholic, was again broken off at once. This second breach taught the Spanish statesmen that they were going a little too fast. The persistent demand of such a condition made James look to France for a daughter-in-law, and so animated the anti-Spanish party in England that the Duke of Lerma, fearing war, thought it expedient to come forward with fresh overtures, in a more palatable shape, for a match with Spain; and sent over his ablest diplomatist to England with that bait on his hook to win her back from the French alliance. Gondomar — to call him by the later title by which he is best known — the man selected for this office, proceeded very cautiously. When pressed by Somerset to use his influence with the King for the very purpose he had come for, he declined to interfere; and it was not till another failure to obtain supplies from another Parliament had made the marriage-portion a matter of national importance, and the King himself raised the question, that he allowed himself to show any interest in the matter. In the mean time he had learned enough, if not about England, at least about the English court, to know that if the negotiation was to proceed far enough even for purposes of dalliance and delusion, it must not begin like the last with a declaration that the conversion of the Prince would be held a preliminary condition. Taking it for a certainty that if the stringency of the laws against the Catholics were once mitigated the conversion of all England would follow, he advised Philip to confine his demand for the present to that. Now to the mitigation of these laws James had no personal objection. Though a sound Protestant himself upon study and conviction, he knew too much of what was to be said on both sides to share the popular feeling against Papists; and there was probably no man in England less disposed to punish anybody for peaceably holding an old and respectable opinion, though it were not his own. The gravest objection

to the course proposed — perhaps in his eyes the only objection — was its unpopularity with the House of Commons. But if it was good in itself, it may be fairly questioned whether that objection ought to have been held conclusive. The responsibility for the government of the country was not then vested either formally or virtually in the House of Commons, but in the King and Council. For the present all that was asked was an engagement that the penal laws against the Catholics should be allowed to sleep, — that breaches of them should be connived at, or penalties remitted; and with this understanding Sir John Digby was sent to Madrid before the end of 1614 to manage the negotiation. In the following March the Spanish proposals were embodied in a series of articles, which were forwarded to England, and after some discussion and modification accepted as a basis of negotiation. Prince Charles was not yet fifteen, so there was no hurry; and the business proceeded slowly through many interruptions. The Pope's dispensation, or the promise of it (without which Spain could not proceed) had to be obtained. A junta of theologians had to be established at Madrid to whom doubts might be referred or inconsistencies imputed. The English negotiations for a marriage with a daughter of France had to be handsomely broken off. Somerset, in whom, with Sir Robert Cotton as an ally, Gondomar fancied he had found the very instrument he wanted for the conversion of England, was arrested on a charge of complicity in the murder of Overbury, and disappeared from the stage, not to appear again. A quarrel between Spain and Savoy involved James in a new negotiation which had nearly brought him to blows with Spain. But in spite of all these delays and interruptions the marriage-treaty had made progress enough by this time to be ripe for consideration in Council; and on the 2d of March, 1616-17, the King himself explained the case generally to certain

selected Councillors, referring them to Sir John Digby for all particulars, and asking for their advice. Upon a full review of all the circumstances they agreed that his Majesty might with honor enter into a treaty of marriage, and enter openly, and by giving commission under his great seal. Bacon was one of these, and may be fairly held responsible for concurring in the affirmative opinion. Now we have seen that about a year and a half before, he had said in a letter to the King that though the *rumor* of a match with Spain might be of use, he "should not easily advise that it should be really effected;" and in what respect, it may be asked, was the case changed so as to justify a change in his opinion? The change, I imagine, was not so much in the case itself as in his knowledge of it. It is one thing to advise a man against a particular marriage when you suppose him to stand quite free, and another when you know him to have given the lady just reason to expect an offer. Till Bacon heard Digby's account of the state of the negotiation he did not know how far the King was committed. The question now was not whether it was wise to commit himself so far, but being so far committed, how it was best to proceed. Bacon's objection to the marriage was founded probably upon the unpopularity of Spain with the majority of the House of Commons. In the eyes of the Puritans an alliance with Spain was an alliance with Antichrist, and believing as he did that the only adequate remedy for those pecuniary embarrassments which were making all the business of Government so difficult must come from Parliament, he feared that the effect would be to postpone it; the Lower House would be less than ever in a humor to vote supplies. That the popular feeling was in great part superstitious and irrational did not make it the less formidable; and I know no reason for supposing that he thought better of the match in point of policy than he had done before. But the King

— who governed in these matters for himself — had already advanced so far (with the zealous assistance, be it remembered, of no less a man than Sir John Digby, however originally against his advice) that he could not easily retreat without inconsistency and discredit; and the best that could now be done was to manage the conditions so as either to disarm the alliance of all danger or to break it off in good time and on good terms. Now a marriage with Spain, though unpopular in England, was not necessarily a bad thing in itself. Carried out fairly on both sides, it might have been good for both. If the Spanish government could have seen and accepted the fact that England had become a Protestant nation, and not merely a nation governed by a sovereign who for politic reasons professed himself a Protestant; if they could have believed that Protestantism had as much faith in its own gods as they had in theirs; if they could have been content to aim at the relief of the English Catholics from oppression without aspiring to reëstablish them in authority; and if they could have cordially united with England in an endeavor to compose the religious dissensions of Europe by enforcing equitable conditions between the contending parties; the alliance might have proved a fortunate thing for the world. The Catholics of England, ceasing to be dangerous, would have been less persecuted; and such measures for the good of Europe as England and Spain would have concurred in taking would have been measures for the good of Europe. We know now that this was not to be. We know now that the Spanish statesmen utterly misunderstood the case; that their wisest councillors were under a fixed impression that the reëstablishment of Catholicism in England (the highest service they could render to God and his Church) might be effected by a Royal Proclamation, and that a Royal Proclamation for the purpose might be obtained by a little cajolery and bribery. We know that



they were trying from first to last to manage the negotiation in that spirit to that end. But the English councillors at that time, whatever they may have apprehended, had no right to *assume* all this. It was enough to be prepared for the contingency. The professions of Spain, so far, were fair; the offers liberal; the demands not unreasonable. So long as England was asked to do nothing in return except what would be good in itself, — and a relaxation of the severities which the Gunpowder Plot had brought upon the Catholics,<sup>1</sup> under conditions tending to make them loyal, would have been a good thing, — there was no reason why the proposal should not be entertained. If in the course of the negotiation they should alter their terms and increase their demands, it would still be open to refuse them, and (if they insisted) to break off the treaty. And a breach upon that ground — especially if it turned upon a point of Religion, as it probably would — far from being a disadvantage, would leave the Government in a better position than it stood in now; for it would be a popular quarrel, and would give them the support, not only of the Parliament and people at home, but of Protestantism through Europe. They held it, in short, to be a very safe enterprise; for if it succeeded, the conditions would be honorable and advantageous; if it failed, the breach would be honorable and advantageous.

Such I take to have been the substance of the advice which these councillors gave the King. We shall see as we proceed how Bacon tried to give effect to it.

The part which he took in this deliberation was probably his last service as Attorney General. On the 5th of March, the Lord Chancellor, who had long been begging to be relieved from the cares of office, succeeded at last in inducing the King to accept his resignation. He was allowed to deliver up the Great Seal on the 6th, and

<sup>1</sup> See Lingard, under date 27 May, 1606.

on the 7th it was given, with the title of Lord Keeper, to Bacon. Contemporary letter-writers mention several competitors for the appointment, and name the sums they offered for it. But such stories are valuable only as evidence of what people were ready to believe. Bacon considered himself indebted for it to the disinterested friendship of Buckingham; and it may well be believed that if the Favorite had used his influence for another, the chances would have been against him. The next letter, written on the same day on which he received the seal from the King, expresses his sense of the obligation:—

MY LORD KEEPER TO MY LORD OF BUCKINGHAM UPON  
HIS BEING CHOSEN LORD KEEPER.

MY DEAREST LORD, — It is both in cares and kindness, that small ones float up to the tongue, and great ones sink down into the heart with silence. Therefore I could speak little to your Lordship to-day, neither had I fit time: but I must profess thus much, that in this day's work you are the truest and perfectest mirror and example of firm and generous friendship that ever was in court. And I shall count every day lost, wherein I shall not either study your well-doing in thought, or do your name honor in speech, or perform you service in deed. Good my Lord, account and accept me,

Your most bounden and devoted friend  
and servant of all men living,

FR. BACON, C. S.

March 7, 1616.

Bacon was now the principal officer of the kingdom, except the King; and he made it his business to keep the King continually informed in his absence of all that passed in Council.

I have explained what I conceive to have been his position with regard to the Spanish match. The King was

too far committed to retreat without further cause. The best course was to continue the negotiation, and endeavor to guide it to some good end; for the benefit of Christendom, including both Protestants and Catholics, if it was to go on; of England and Protestantism, if it was to be broken off. At present it seemed to be going on; and we are now to see what kind of good Bacon proposed to get out of it, and how.

TO THE KING.

MAY IT PLEASE YOUR MOST EXCELLENT MAJESTY, — My continual meditations upon your Majesty's service and greatness have amongst other things produced this paper enclosed, which I most humbly pray your Majesty to excuse, being that which, in my judgment, I think to be good, both *de vero* and *ad populum*. Of other things I have written to my Lord of Buckingham. God forever preserve and prosper your Majesty.

Your Majesty's humble servant,  
most devoted and most bounden,

FR. BACON.

March 23, 1616.

A REMEMBRANCE ADDITIONAL TO THE INSTRUCTIONS  
OF SIR JOHN DIGBY.

Besides your instructions directory to the substance of the main errand, we would have you in the whole carriage and passages of your negotiation, as well with the King himself as the Duke of Lerma and Council there, intermix discourse upon fit occasions, that may express ourselves to the effect following:—

That you doubt not but that both kings, for that which concerns religion, will proceed sincerely, both being intire and perfect in their own belief and way: but that there are so many noble and excellent effects, which are equally acceptable to both religions, and for the good

and happiness of the Christian world, which may arise of this conjunction, as the union of both kings in actions of estate may make the difference in religion as laid aside and almost forgotten.

As first, that it will be a means utterly to extinguish and extirpate pirates, which are the common enemies of mankind, and do so much infest Europe at this time.

Also, that it may be a beginning and seed (for the like actions before have had less beginnings) of a holy war against the Turk, whereunto it seems the events of time doth invite Christian kings, in respect of the great corruption and relaxation of discipline of war in that empire; and much more in respect of the utter ruin and enervation of the Grand Signor's navy and forces by sea; which openeth a way (without congregating vast armies by land) to suffocate and starve Constantinople, and thereby to put those provinces into mutiny and insurrection.

Also, that by the same conjunction there will be erected a tribunal or prætorian power to decide the controversies which may arise amongst the princes and estates of Christendom without effusion of Christian blood; for so much as any estate of Christendom will hardly recede from that which the two kings shall mediate or determine.

Also, that whereas there doth as it were creep upon the ground a disposition in some places to make popular estates and leagues to the disadvantage of monarchies, the conjunction of the two kings will be able to stop and impede the growth of any such evil.

These discourses you shall do well frequently to beat upon, and therewithal to fill up the spaces of the active part of your negotiation; representing that it stands well with the greatness and majesty of the two kings to extend their cogitations and the influence of their government, not only to their own subjects, but to the state of the whole world besides, specially the Christian portion thereof.

The next letter, written a month later, reveals the existence of some discordant element at the Council-board, upon which I am not able to throw any clearer light. It was no secret that there were some of the Cabinet opposed to the match. "The Archbishop of Canterbury, Mr. Comptroller, and Sir Ralph Winwood," says Chamberlain, March 29, "are excepted and left out [of the Commission] as openly opposite." But it was at this time that Sir Walter Raleigh was preparing for his voyage to Guiana, and if Mr. Gardiner is justified in asserting, as a fact of which "there can be little doubt," that "Winwood was urging him to break the peace at all hazards, and to fall upon the Mexico fleet, as the best means, if all others failed, of bringing the King to a rupture with Spain,"<sup>1</sup> this discovery, which was new to Bacon, "and opened but darkly," and on which Sir John Digby was to report further to the King, may have related to some suspected proceeding of his. A secretary of state who was capable of such a plot against the government he was serving must have been a very dangerous man to employ, and though it seems too much to believe of any man on no better authority than the report of an ambassador, yet the very rumor can hardly have gained currency respecting one in his place, unless he had been really implicated in some questionable transaction.

That the "treaty with Spain" referred to in the fourth paragraph was the marriage treaty, appears from the following passage in a letter of later date: "But to speak of the main business, *which is the match with Spain*, the King knoweth my mind by a former letter, that I would be glad it proceeded with an united council," evidently referring to the letter which follows:—

<sup>1</sup> *P. Charles and the Spanish Marriage*, vol. i., p. 61.

## TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — Mr. Vice-Chamberlain hath acquainted myself and the rest of the commissioners for the marriage of Spain which are here, with your Majesty's instructions, signed with your royal hand, touching that point of the suppressing of the pirates, as it hath relation to his negotiation; whereupon we met yesterday at my Lord Admiral's, at Chelsea, because we were loth to draw my Lord into the air, being but newly upon his recovery.

We conceive the parts of the business are four. The charge. The confederations, and who shall be solicited or received to come in. The forces and the distributions of them. And the enterprise. We had only at this time conference amongst ourselves, and shall appoint (after the holy-days) times for the calling before us such as are fit, and thereupon perform all the parts of your royal commandments.

In this conference I met with somewhat which I must confess was altogether new to me, and opened but darkly neither; whereof I think Mr. Vice-Chamberlain will give your Majesty some light, for so we wished.<sup>1</sup> By occasion

<sup>1</sup> A letter from Digby to Buckingham, dated London, May 1, 1617, seems to refer to this.

"I may not omit to let you understand that concerning the chief business which I am to treat, I find here great industry used to discredit it, and to have it believed that it will never succeed, nor that his M. intendeth it, and notwithstanding all that hath been done herein by his M. it is still avowed that the Treaty with France was never dissolved but is yet in subsistence, for that the suspending of it had still a relation to the time that things should be quieted and settled in France, which are now (they say) in a fair way. The Spanish ambassador hath divers times spoken with me about this, and I have ever given him full assurance of his M.'s sincere intentions, and he hath parted from me well satisfied; but others speak the contrary with that confidence, and are persons of that quality and place, that he is much distracted. For mine own part I shall earnestly entreat your Lp. to represent unto his M. this my humble opinion, which I do for the discharge of my duty and service, that if whilst this treaty shall be on foot his M. shall not be pleased, with the show of a constant resolution and his favor to strengthen it, but that his inclination and affection shall be allowed to be doubtful, nay, averse, but only for other ends (for this I

whereof I hold it my duty, in respect of the great place wherein your Majesty hath set me (being only made worthy by your grace) which maketh it decent for me to counsel you *ad summas rerum*, to intimate or represent to your Majesty thus much.

I do foresee, in my simple judgment, much inconvenience to insue, if your Majesty proceed to this treaty with Spain, and that your Council draw not all one way. I saw the bitter fruits of a divided Council the last Parliament; I saw no very pleasant fruits thereof in the matter of the cloth. This will be of equal, if not more inconvenience; for wheresoever the opinion of your people is material (as in many cases it is not), there, if your Council be united, they shall be able almost to give law to opinion and rumor; but if they be divided, the infusion will not be according to the strength and virtue of the votes of your council, but according to the aptness and inclination of the popular. This I leave to your Majesty in your high wisdom to remedy. Only I could wish that when Sir John Digby's instructions are perfected, and that he is ready to go, your Majesty would be pleased to write some formal letter to the body of your Council (if it shall be in your absence) signifying to them your resolution in general; to the end that when deliberation shall be turned into resolution, no man (howsoever he may retain the inwardness of his opinion) may be active *in contrarium*.

The letters of my Lords of the Council with your Majesty touching the affairs of Ireland, written largely and articulately, and by your Majesty's direction, will much

write unto your Lp. upon good grounds), I doubt his M. will not only in Spain find cold and unlooked for answers, but will, I fear, fail of any other service to which this treaty may be made useful (although it should miscarry) if it be constantly and secretly managed. I presume to write thus much, lest whilst his M. is pleased herein to proceed with his accustomed wisdom, and his ministers employed by him with fitting duty and care, others either unwittingly or through averseness overthrow not his M.'s service and intention." (From a copy made by Mr. Gardiner from the original holograph.)

facilitate our labors here; though there will not want matter of consultation thereupon. God ever preserve your Majesty safe and happy.

Your Majesty's most devoted and obliged servant,

FR. BACON, C. S.

London, April 19, 1617.

The administration of the ecclesiastical patronage of the Crown during Bacon's four years of office would be worth looking into if the records were accessible. The next letter, which is the only one of the kind that I have met with, shows that he began with the intention of bestowing the livings in his gift upon men selected for their worth and fitness, and one would like to know whether any improvement was visible in the general character of the clergy during these years. I am afraid there are no means of ascertaining, without an immoderate amount of labor, what livings in the Chancellor's gift were vacant at what time, and to whom they were given. Otherwise, as collective biographies of all persons who can be included under a given title have been fashionable of late, — as we have had *Lives of the Chancellors*, the *Judges*, the *Queens*, the *Princesses*, the *Archbishops of Canterbury*, and I do not know how many more, — I would recommend to a biographer in search of a subject "*Lives of the beneficed clergymen presented by the Lord Chancellor Bacon.*"

This letter was first printed by Birch "from the collection of the late Robert Stephens, Esq.," but not quite correctly. Among those collections, now in the British Museum, I find a paper in the hand of John Locker (Add. MSS. 4260, f. 115), from which I conclude he took it. It runs thus: —

"By the copy of a letter of the Lord Chancellor Bacon, 24 Apr. 1617, to the Bp. of Norwich, it appears that his Lp. had presented Mr. Gyles Fletcher of Trin: Coll: Camb. to the rec-



tory of Helmingham in Suffolk: and by another letter that he presented one Mr. Maxey, Fellow of Christ Church in Oxford, who had been of Trinity in Cambr. to the rectory of Frome St. Quentin, with the chapel of Evershot in Dorsetshire.

To Mr. Maxey he writes thus:—

After my hearty commendations, I having heard of you, as a man well deserving, and of able gifts to become profitable in the church; and there being fallen within my gift the rectory of etc., which seems to be a thing of good value, £18 in the King's books, and in a good country, I have thought good to make offer of it to you; the rather that you are of Trinity college, whereof myself was some time: and my purpose is to make choice of men rather by care and inquiry, than by their own suits and commendatory letters. So I bid you farewell from Dorset House, 23 April, 1617.

Your loving friend.

The letter to the Bishop of Norwich I have not met with.

The letter which follows is again a solitary specimen. There was once (and perhaps in some unexplored bundle of papers there still is) a letter from Bacon to his *brother* on the same subject and of the same date.<sup>1</sup> But letters from fathers or brothers to one another about marriages for daughters or sisters or nieces were ordinary affairs of business in those days. Letters addressed to the young ladies themselves in such cases were rarer and of more tenderness. And a letter of advice from Bacon to his niece upon an offer of marriage to which she was not inclinable is a task which, exhibiting him in a new relation, throws some new light upon his character,—a light which is the more valuable because, while he has left the records of the *business* of his life for our inspection in

<sup>1</sup> See an entry of a letter in Stephens's catalogue: date "23 April, 1617;" beginning "I thank you for your:" contents, "advising a marriage for his daughter;" address "his brother."

such abundance and with so little reserve, — while he makes us welcome to attend him to the courts, the palace, the Parliament, and the council-board; to his gardens, his chambers, and his study; he seldom or never admits us to his fireside. We have a few letters of affection to kinsmen or familiar friends, which are among the most agreeable of his writings; but if it had not been for the miscellaneous bundles of papers of all sorts left by his brother Anthony, and probably never examined, we should have known nothing at all of his more intimate domestic relations. Here we get a glimpse of him as an uncle only; but in the absence of all records of that most intimate relation of all, an account of which seems to have been expected of me, but must still be expected in vain, it is something to know how he acquitted himself in a correspondence with the daughter of his half-brother.

THE LORD KEEPER TO HIS NIECE, TOUCHING HER MARRIAGE.

GOOD NIECE, — Amongst your other virtues I know there wanteth not in you a mind to hearken to the advice of your friends; and therefore you will give me leave to move you again more seriously than before in the match with Mr. Comptroller.<sup>1</sup> The state wherein you now are is to be preferred before marriage, or changed for marriage, not simply the one or the other, but according as by God's providence the offers of marriage are more or less fit to be embraced. This gentleman is religious, a person of honor, being Councillor of State, a great officer, and in very good favor with his Majesty. He is of years and health fit to be comfortable to you,

<sup>1</sup> Sir Thomas Edmondes, who had been appointed to that office, December 21, 1616; and, January, 19, 1617-18, was made Treasurer of the Household. He had been married to Magdalen, one of the daughters and co-heirs of Sir John Wood, Knight, Clerk of the Signet; which Lady died at Paris, December 31, 1614.

The proposal for a second marriage between him and the Lord Keeper's niece does not appear to have had success. (Note by R. Stephens.)

and to free you of burdensome cares. He is of good means and a wise and provident man, and of a loving and excellent good nature, and as I find, hath set his affection upon you; so as I foresee you may sooner change your mind, which as you told me is not yet toward marriage, than find so happy a choice. I hear he is willing to visit you before his going into France, which by the King's commandment is to be within some ten days; and I could wish you used him kindly and with respect. His return out of France is intended before Michaelmas. God direct you, and be with you. I rest

Your very loving uncle, and assured friend,

FR. BACON, C. S.

DORSET HOUSE, this 28 April, 1617.

On the 7th of May, Bacon took his seat in the Court of Chancery. "Our Lord Keeper," says one of Carleton's correspondents, "exceeds all his predecessors in the bravery and multitude of his servants. It amazes those that look on his beginnings, besides never so indulgent a master. On the first day of term he appeared in his greatest glory; for to the Hall, besides his own retinue, did accompany him all the Lords of his Majesty's Council and others, with all knights and gentlemen that could get horses and foot-cloths."

Chamberlain also came up to town to see the show. "He was accompanied," he says, "by most of the nobility, with other gallants, to the number of more than 200 horse, besides the Judges and the Inns of Court. There was a great deal more bravery and better show of horse than was expected in the King's absence; but both Queen and Prince sent all their followers, and his other friends did their best to honor him." Camden appends to his brief note of the fact the order of the procession, as became the Clarence king of arms: but with this, having matter of more moment to deal with, I need

not trouble the reader. "He made a speech in Chancery," continues Chamberlain, "whereof I was promised a copy; but as I hear himself hath hindered that none shall be dispersed; whether it be, as some think, that there is a meaning to have it printed, or rather, as others to the contrary, that it was not like himself nor altogether worthy of him."

His object in forbidding copies to be dispersed was partly no doubt because he wished the first copy to go to the King, and partly to prevent the circulation of imperfect reports.

The effect of the day was a little marred, according to Chamberlain, by an inferior exhibition which succeeded this speech. It happened that the first motion was to be made by a brother of the Earl of Huntingdon — a young lawyer. Bacon wished the Lords that had come with him to stay and hear it, which they did. Unluckily he performed his part but poorly; "being, as his friends said, not provided, but called on the sudden." Upon the whole, however, Bacon was very well satisfied with the day's work — as will appear by his own reports to the King and Buckingham, written immediately after; of which so much as relates to this matter may follow without further comment.

"Yesterday I took my place in Chancery, which I hold only from the King's grace and favor, and your friendship. There was much ado, and a great deal of world. But this matter of pomp, which is heaven to some men, is hell to me, or purgatory at least. It is true I was glad to see that the King's choice was so generally approved, and that I had so much interest in men's good wills and good opinions, because it maketh me the fitter instrument to do my master service and my friend also.

"After I was set in Chancery, I published his Majesty's charge which he gave me when he gave me the seal, and what rules and resolutions I had taken for the fulfilling

of his commandments. I send your Lordship a copy of that I said. My Lord Hay coming to take his leave of me two days before, I told him what I was meditating, and he desired me to send him some remembrance of it; and so I could do no less but send him another copy thereof. Men tell me it hath done the King a great deal of honor; insomuch that some of my friends that are wise men and no vain ones, did not stick to say to me, that there was not these seven years such a preparation for a Parliament; which was a commendation, I confess, pleased me well. I pray take some fit time to show it his Majesty, because if I misunderstood him in anything, I may amend it, because I know his judgment is higher and deeper than mine. . . .

“Yesterday, which was my weary day, I bid all the Judges to dinner (which was not used to be), and entertained them in a private withdrawing chamber with the learned counsel. When the feast was passed, I came amongst them, and set me down at the end of the table, and prayed them to think I was one of them, and but a foreman. I told them I was weary and therefore must be short, and that I would now speak with them but upon two points. Whereof the one was, that I would tell them plainly that I was firmly persuaded that the former discords and differences between the Chancery and other courts was but flesh and blood; and now the men were gone, the matter was gone; and that for my part, as I would not suffer any the least diminution or derogation from the ancient and due power of the Chancery, so if anything should be brought to them at any time touching the proceedings of the Chancery which did seem to them exorbitant or inordinate, that they should freely and friendly acquaint me with it, and we should soon agree; or if not, we had a master that could easily both discern and rule. At which speech of mine, besides a great deal of thanks and acknowledgment, I did

see cheer and comfort in their faces, as if it were a new world. The second point was, that I let them know how his Majesty at his going gave me charge to call and receive from them the accounts of their circuits, according to his Majesty's former prescript to be set down in writing, and that I was to transmit the writings themselves to his Majesty; and accordingly as soon as I have received them I will send them to his Majesty." . . . .

After the 9th of May we hear no more of Bacon for above a week, owing partly no doubt to his absorption in the work of the Chancery, but possibly also to a fit of the gout, which kept him so often from the Council and Star Chamber that people began to doubt whether he would prove equal to his work. Star Chamber days, says Chamberlain, May 24, "have been few or none this term, or not past once at most, by reason of the Lord Keeper's indisposition, which hath greatly hindered both that Court and the Chancery, and if it should continue would much disturb the whole course of Westminster Hall and the Council-table, where matters of greatest moment are still put off and reserved till he may be present. His infirmity is given out to be the gout, and the greatest harm or sense he hath of it is in his heel; and sometimes he takes pleasure to flout and play with his disease; which he says hath changed the old covetous course and is become ambitious; for never beggar had the gout but he. But in truth the general opinion is that he hath so tender a constitution both of body and mind that he will hardly be able to undergo the burden of so much business as his place requires; and that if he do not rouse and force himself beyond his natural inclination, both private subjects and the commonwealth will suffer much."

We shall see presently how groundless this apprehension was, as far, at least, as the business of the Chancery was concerned. It is true that he was unable to attend

the Council on the 21st, and that owing to his absence nothing was done, and it may be that he had missed two Star Chamber days out of the three. But he had appeared two days before in the Common Pleas, the Exchequer, and the Chancery, for the promotion of Judges, and on that occasion made the following short but weighty speeches. I see indeed that in Mrs. Everett Green's Calendar the two first are assigned respectively to the 2d and the 3d of May : I do not know on what authority. My reason for assigning them to the 19th is that Chamberlain, in the letter just quoted (writing on the 24th of May — which was Saturday), reports that “on Monday Sir John Denham was sworn a Baron of the Exchequer in the room of Altham ; and Serjeant Hutton a Judge of the Common Pleas in place of Nicol ; and Sir William Jones of Lincoln's Inn sworn Chief Justice of Ireland.”

THE LORD KEEPER'S SPEECH IN THE COMMON PLEAS,  
TO JUSTICE HUTTON, WHEN HE WAS CALLED TO BE  
ONE OF THE JUDGES OF THE COMMON PLEAS.

MR. SERJEANT HUTTON, — The King's most excellent Majesty, being duly informed of your learning, integrity, discretion, experience, means, and reputation in your country, hath thought fit not to leave you these talents to be employed upon yourself only, but to call you to serve himself and his people, in the place of one of his Justices of the court of common pleas.

This court where you are to serve, is the local centre and heart of the laws of this realm. Here the subject hath his assurance by fines and recoveries. Here he hath his fixed and invariable remedies by *præcipes* and writs of right. Here Justice opens not by a by-gate of privilege, but by the great gate of the King's original writs out of the Chancery. Here issues process of outlawry ; if men will not answer law in this centre of law, they shall be

cast out of the circle of the law. And therefore it is proper for you by all means with your wisdom and fortitude to maintain the laws of the realm. Wherein, nevertheless, I would not have you head-strong, but heart-strong; and to weigh and remember with yourself, that the twelve Judges of the realm are as the twelve lions under Solomon's throne: they must be lions, but yet lions under the throne: they must show their stoutness in elevating and bearing up the throne.

To represent unto you the lines and portraitures of a good Judge: The first is, That you should draw your learning out of your books, not out of your brain.

2. That you should mix well the freedom of your own opinion with the reverence of the opinion of your fellows.

3. That you should continue the studying of your books, and not to spend on upon the old stock.

4. That you should fear no man's face, and yet not turn stoutness into bravery.

5. That you should be truly impartial, and not so as men may see affection through fine carriage.

6. That you be a light to jurors to open their eyes, but not a guide to lead them by the noses.

7. That you affect not the opinion of pregnancy and expedition by an impatient and catching hearing of the counsellors at the bar.

8. That your speech be with gravity, as one of the sages of the law; and not talkative, nor with impertinent flying out to show learning.

9. That your hands, and the hands of your hands (I mean those about you), be clean, and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they of great ones or small ones.

10. That you contain the jurisdiction of the court within the ancient merestones, without removing the mark.

11. Lastly, That you carry such a hand over your



ministers and clerks, as that they may rather be in awe of you, than presume upon you.

These and the like points of the duty of a Judge, I forbear to enlarge; for the longer I have lived with you, the shorter shall my speech be to you; knowing that you come so furnished and prepared with these good virtues, as whatsoever I shall say cannot be new unto you. And therefore I will say no more unto you at this time, but deliver you your patent.

THE LORD KEEPER'S SPEECH, IN THE EXCHEQUER, TO SIR JOHN DENHAM, WHEN HE WAS CALLED TO BE ONE OF THE BARONS OF THE EXCHEQUER, IN 1617.

SIR JOHN DENHAM, — The King, of his grace and favor, hath made choice of you to be one of the Barons of the Exchequer, to succeed to one of the gravest and most reverend Judges of this kingdom; for so I hold Baron Altham was. The King takes you not upon credit but proof, and great proof, of your former service; and that in both those kinds wherein you are now to serve; for as you have showed yourself a good judge between party and party, so you have showed yourself a good administer of the revenue, both when you were Chief Baron, and since as councillor of estate there in Ireland, where the council (as you know) doth in great part manage and mesnage the revenue.

And to both these parts I will apply some admonitions, not vulgar or discursive, but apt for the times, and in few words; for they are best remembered.

First, therefore, above all, you ought to maintain the King's prerogative, and to set down with yourself that the King's prerogative and the law are not two things; but the King's prerogative is law, and the principal part of the law; the first-born or *pars prima* of the law; and therefore in conserving and maintaining that, you conserve and maintain the law. There is not in the body

of man one law of the head, and another of the body, but all is one entire law.

The next point that I would now advise you is, that you acquaint yourself diligently with the revenue, and also with the ancient records and precedents of this court. When the famous case of the Copper Mines was argued in this court, and judged for the King, it was not upon the fine reason of wit; as that the King's prerogative drew to it the chief *in quaque specie*; the lion is the chief of beasts, the eagle the chief of birds, the whale the chief of fishes, and so copper the chief of minerals; for these are but dalliances of law and ornaments: but it was the grave records and precedents that grounded the judgment of that cause; and therefore I would have you both guide and arm yourself with them against these vapors and fumes of law, which are extracted out of men's inventions and conceits.

The third advice I will give you hath a large extent; it is, that you do your endeavor in your place so to manage the King's justice and revenue, as the King may have most profit, and the subject least vexation; for when there is much vexation to the subject and little benefit to the King, then the Exchequer is sick; and when there is much benefit to the King, with less trouble and vexation to the subject, then the Exchequer is sound. As for example: if there shall be much raking for the King's old debts, and the more fresh and late debts shall be either more negligently called upon or over-easily discharged or over-indulgently stalled: or if the number of informations be many, and the King's part or fines for compositions a trifle; or if there be much ado to get the King new land upon concealments, and that which he hath already be not well known and surveyed, nor the woods preserved (I could put you many other cases;) this falls within that which I term the sick estate of the Exchequer; and this is that which makes

every man ready with their undertakings and their projects to disturb the ancient frame of the Exchequer (than the which, I am persuaded, there is not a better); this being the burthen of the song: That much goeth out of the subject's purse, and little cometh to the King's purse. Therefore, give them not that advantage so to say. Sure I am, that besides your own associates, the Barons, you serve with two superior great officers, that have honorable and true ends and desire to serve the King and right the subject.

There resteth, that I deliver you your patent.

THE SPEECH USED BY SIR FRANCIS BACON, LORD KEEPER OF THE GREAT SEAL OF ENGLAND, TO SIR WILLIAM JONES, UPON HIS CALLING TO BE LORD CHIEF JUSTICE OF IRELAND, 1617.

SIR WILLIAM JONES, — The King's most excellent Majesty, being duly informed of your sufficiency every way, hath called you, by his writ now returned, to the state and degree of a serjeant at law; but not to stay there, but, being so qualified, to serve him as his Chief Justice of his King's Bench in his realm of Ireland. And therefore that which I shall say to you, must be applied not to your serjeant's place (which you take but in passage) but to that great place where you are to settle; and because I will not spend time to the delay of the business of causes of the court, I will lead you the short journey by examples, and not the long by precepts.

The place that you shall now serve in hath been fortunate to be well served in four successions before you. Do but take unto you the constancy and integrity of Sir Robert Gardiner; the gravity, temper, and discretion of Sir James Lea; the quickness, industry, and dispatch of Sir Humphrey Winch; the care and affection to the commonwealth, and the prudent and politic administration of Sir John Denham; and you shall need no other

lessons. They were all Lincoln's-Inn men as you are ; you have known them as well in their beginnings as in their advancement.

But because you are to be there not only Chief Justice, but a councillor of estate, I will put you in mind of the great work now in hand, that you may raise your thoughts according unto it.

Ireland is the last *ex filiis Europæ* which hath been reclaimed from desolation and a desert (in many parts) to population and plantation ; and from savage and barbarous customs to humanity and civility. This is the King's work in chief. It is his garland of heroical virtue and felicity, denied to his progenitors, and reserved to his times. The work is not yet conducted to perfection, but is in fair advance. And this I will say confidently, that if God bless that kingdom with peace and justice, no usurer is so sure in seven years' space to double his principal with interest, and interest upon interest, as that kingdom is within the same time to double the stock both of wealth and people. So as that kingdom, which once within these twenty years wise men were wont to doubt whether they should wish it to be in a pool, is like now to become almost a garden, and younger sister to Great Britain. And therefore you must set down with yourself to be not only a just governor, and a good Chief Justice (as if it were in England), but under the King and the Deputy you are to be a master-builder, and a master-planter, and reducer of Ireland. To which end I will trouble you at this time but with three directions.

The first is, that you have special care of the three plantations. That of the north, which is in part acted : that of Wexford, which is now in distribution : and that of Longford and Letrim, which is now in survey. And take this from me, that the bane of a plantation is, when the undertakers or planters make such haste to a little mechanical present profit, as disturbeth the whole frame

and nobleness of the work for times to come. Therefore hold them to their covenants, and the strict ordinances of plantation.

The second is, that you be careful of the King's revenue, and by little and little constitute him a good demesne, if it may be; which hitherto is little or none. For the King's case is hard, when every man's land shall be improved in value with increase manifold, and the King shall be tied to his dry rent.<sup>1</sup>

My last direction (though first in weight) is, that you do all good endeavors to proceed resolutely and constantly, and yet with due temperance and equality, in matters of religion; lest Ireland civil become more dangerous to us than Ireland savage. So God give you comfort of your place.

[*After Sir William Jones's Speech :*]

I had forgotten one thing, which was this. You may take exceeding great comfort, that you shall serve with such a Deputy; one that (I think) is a man ordained of God to do great good to that kingdom. And this I think good to say to you, that the true temper of a Chief Justice towards a Deputy is, neither servilely to second him, nor factiously to oppose him.

The short letter which follows deserves attention, because it was brought up again two months later in a way for which Bacon, I am sure, was not at all prepared. It would not be well, however, to anticipate the story; and therefore I shall only say now that it was imputed to him by the King as a grave offense, and leave the reader for the present to guess wherein the offense lay.

<sup>1</sup> The Notes in Harl. MSS. 1576, give this passage thus: "Most of the land hath passed through his hand; yea, and yet when the sun shines or rains in Ireland, it shines not nor rains not on the King's revenue here. And when every man's land rises threefold, fourfold, and fivefold, the King shall be tied to his dry rent."

TO THE R. HON. HIS VERY GOOD L. THE EARL OF BUCKINGHAM, OF HIS M.'S MOST HON. COUNCIL OF ENGLAND AND SCOTLAND.

MY VERY GOOD LORD, — I know your Lordship hath a special care of anything that concerneth the Queen. She was entered into dislike of her Solicitor, this bearer Mr. Lowder, and resolute in it. To serve and not to please is no man's condition. Therefore upon knowledge of her pleasure he was willing to part with his place, upon hope not to be destituted, but to be preferred to one of the Baron's places in Ireland. I pray move the King for him, and let his Majesty know from me, that I think (howsoever he pleased not here) he is fit to do his Majesty service in that place; he is grave and formal (which is somewhat there), and sufficient enough for that place. The Queen hath made Mr. Hackwell her solicitor, who hath for a long time taken much pains in her business, wherein she hath done well. He was an opposite in Parliament, as Jones was, that the King hath made Chief Justice of Ireland. But I hold it no ill counsel to win or to remove such men. God preserve and prosper you.

Your true and devoted friend and servant,

FR. BACON.

WHITEHALL, 25 May, 1617.

We shall now have an opportunity of seeing how very wide of the mark "the general opinion" may be (even when collected by so dispassionate and sensible a man as Chamberlain) in its speculations upon the proceedings of men in great place. We have all of us abundant opportunities of seeing exactly the same thing among ourselves; but in history of past times it does not often happen that the general opinion and the particular fact can be brought into such immediate comparison. And in the absence of express contradiction by the event, popular

rumors are too commonly accepted as worth very much more in the way of evidence than they really are. Easter term, which began on the 7th of May, ended on the 2d of June. Bacon's absence on two or three occasions at the council board or Star Chamber had alarmed people for the country. The Lord Keeper had not health or strength for his work: what was to become of the private subject and the commonwealth? On the 8th of June Bacon wrote to Buckingham the following letter, which will give the answer:—

TO THE EARL OF BUCKINGHAM.

MY VERY GOOD LORD, — This day I have made even with the business of the kingdom for common justice. Not one cause unheard. The lawyers drawn dry of all the motions they were to make. Not one petition unanswered. And this I think could not be said in our age before. This I speak not out of ostentation, but out of gladness, when I have done my duty. I know men think I cannot continue, if I should thus oppress myself with business. But that account is made. The duties of life are more than life. And if I die now I shall die before the world be weary of me, which in our times is somewhat rare. And all this while I have been a little unperfect in my foot. But I have taken pains more like the beast with four legs, than like a man with scarce two legs. But if it be a gout (which I do neither acknowledge nor much disclaim) it is a good-natured gout; for I have no rage of it, and it goeth away quickly. I have hope it is but an accident of changing from a field-air to a Thames-air;<sup>1</sup> or rather, I think, it is the distance of the King and your Lordship from me that doth congeal my humors and spirits.

When I had written this letter, I received your Lord-

<sup>1</sup> From Gray's Inn to Dorset House, which had been lent to him while York House was getting ready.

ship's letter of the third of this present,<sup>1</sup> wherein your Lordship sheweth your solicitous care of my health, which did wonderfully comfort me. And it is true, that at this present I am very well, and my supposed gout quite vanished.

I humbly pray you to commend my service, infinite in desire, howsoever limited in ability, to his Majesty, to hear of whose health and good disposition is to me the greatest beatitude which I can receive in this world. And I humbly beseech his Majesty to pardon me that I do not now send him my account of council business, and other his royal commands, till within these four days; because this flood of business of justice did hitherto wholly possess me; which I know worketh this effect, as it contenteth his subjects, and knitteth their hearts more and more to his Majesty; though I must confess my mind is upon other matters, as his Majesty shall know, by the grace of God, at his return. God ever bless and prosper you.

Your Lordship's true and most  
devoted friend and servant,

FR. BACON.

WHITEHALL, this 8th of June, 1617.

It was about this time that Bacon had the pleasure of welcoming his old friend Toby Matthew back into England. He had always kept up a correspondence with him, and there are several of his letters among the papers at Lambeth, which, having been first printed by Birch in his "Letters, etc., of the Lord Chancellor Bacon," and afterwards included in his edition of the entire works, have been retained by all succeeding editors. In this collection I do not include letters addressed to Bacon by

<sup>1</sup> The original letter may be seen in Harl. MSS. 7006. It is merely an affectionate letter of inquiry upon a report (probably from Winwood, May 22) that Bacon had been confined to his chamber. It is chiefly notable as showing how very calm and sweet the weather was, so short a time before the storm which we shall witness presently.



other people, except where they help to throw light upon his own, or upon himself, — upon his letters or his life, — which I have not hitherto found to be the case with Toby Matthew's, otherwise than as showing the continuance on both sides of a very warm interest and affection, stimulated by common studies and mutual services. The services had been hitherto, from the nature of the case, all on Bacon's side. For Matthew was still an exile, longing to return; and as there was no reason for keeping him in exile except the supposed necessity of making him take the oath of allegiance (for though inexorably faithful to his new religion, he appears to have continued perfectly loyal to England), all the influence that Bacon had was used in his favor. This by itself was not very much, I fancy. But in 1616, fortune presented Matthew, who was then at Brussels, with a new chance. After his banishment from England in February 1607-8,<sup>1</sup> he had gone into France and there made the acquaintance of Mr. Villiers. Mr. Villiers, who was then nobody, had suddenly become the most powerful instrument in England for overcoming a scruple in the King's mind; and Matthew took advantage of the opportunity to press his suit. As a mediator both with Villiers and the Archbishop and the King, Bacon could be of great use; and though the complimentary phrases used by a fine and ingenious writer in expressing his obligations to such a man are not to be quoted as historical evidence, it is plain that Matthew really attributed the success of the mediation (so far as it was successful) in great part to Bacon's zeal and judgment. A letter which he certainly received from him about the middle of August, 1616, would have given us better information; but the copy which was once among his papers has unfortunately disappeared; and all we know of it is gathered from the terms in which it was acknowledged. These therefore I give in full.

<sup>1</sup> See above, vol. i., pp. 518-521.

“I have been happy by your Honor’s noble and dear lines of the two and twentieth of July, and the joy that I took therein was only kept from excess by the notice they gave me of some intentions and advices of your Honor which you had been pleased to impart to other of my friends with a meaning that they should acquaint me with them, whereof they have entirely failed. And therefore (if still it should import me to understand what they were) I must be enforced to beg the knowledge of them from yourself. Your Honor hath by this short letter delivered me otherwise from a great deal of laborious suspense. For (besides the great hope you give me of being so shortly able to do you reverence) I am come to know that by the diligence of your favor towards me my Lord of Canterbury hath been drawn to give way, and the Master of the Horse hath been induced to move. That motion I trust will be granted howsoever, but I should be out of fear thereof if, when he moves the King, your Honor would cast to be present; that if his Majesty should make any difficulty, some such reply as is wont to come from you in such cases may have power to discharge it.

The difficulty seems now to have been entirely with the King. Chamberlain, who had an interest in Matthew as a friend of Carleton’s, spoke to Winwood in favor of his suit on the 11th of October, who told him plainly “that the King would not hear of it; and yet he had both moved it himself, and got the Lord Villiers, for the acquaintance he had abroad with Mr. Matthew, to move it likewise; but with the like success. Yet he says that if he could be brought to take the oath of allegiance he would not leave urging till he had effected it.” In the beginning of December Bacon was again employed in the negotiation; as I gather from another entry in Stephens’s catalogue; but in what way and with what success we do not know. All we know is that Matthew obtained leave to return (though subject to some conditions of restraint) in May, and that in the middle of July he arrived. On the 18th, Chamberlain saw him at Winwood’s house: who “used him,” he says, “kindly, and

dealt earnestly with him to take the oath of allegiance ; but as far as I could perceive it was lost labor ; though he told him without doing it he was verily of opinion the King would not endure him long here." Bacon, I imagine, had undertaken to be answerable for his behavior. For it was as his guest that he remained in England. "Perhaps (adds Chamberlain) he presumes upon my Lord Keeper's favor, which indeed is very great now at first, if it continue ; for he lodgeth him in York House, and carries him the next week along with him to Gorhambury by St. Albans." So great indeed was the favor he showed him, that people began to think it too much. For writing again three weeks after Chamberlain reports him still at Gorhambury ; "being so exceedingly favored and respected by that Lord that it is thought *aliquid nimium*, that a man of his place should give so much countenance to one so affected. And some stick not to say that former private familiarity should give place to public respects." It could not be expected that when all papists were so much suspected and disliked as they then were, attentions of this kind to a pervert and a recusant would escape popular censure. But they were open to no just objection, and were of important service to a valued friend, whose society we leave Bacon to enjoy during the short interval of fair weather which preceded the squall to be described in the next chapter.

### CHAPTER III.

A. D. 1617. JUNE-SEPTEMBER. ÆTAT. 57.

EARLY in July, Bacon received a letter from a friend who had been to the Court in Scotland, giving a favorable report of the progress of business in the session of Parliament which had just closed. The business I need not meddle with, as it does not concern any part of his correspondence. But the concluding paragraph seems to imply some apprehension of trouble in store for Bacon himself.

“I have made good profit,” he says, “of my journey hither; for I have gotten a transcript of the speech which your Lordship did deliver at your first and happy sitting in the Chancery; which I could not gain in England. It hath been showed to the King, and received due approbation. The God of Heaven, all-wise and all-sufficient, guard and assist your Lordship in all your actions; for I can read here whatsoever your Lordship doth act there; and your courses be such as you need not to fear to give copies of them. But the King’s ears be wide and long, and he seeth with many eyes. All this works for your honor and comfort. I pray God nothing be soiled, heated, or cooled in the carriage. Envy sometimes attends virtues and not for good; and these bore certain proprieties and circumstances inherent to your Lordship’s mind, which men may admire, I cannot express. But I will wade no further herein lest I should seem eloquent,” etc.

Whatever these vague hints meant, it was true that Bacon’s favor with the King and Buckingham was in great danger at this time; and the danger had arisen in an unsuspected quarter. We left Sir Edward Coke last November preparing to follow the counsel of his anony-

mous adviser and "learn of the unjust steward to make friends of the unrighteous Mammon."<sup>1</sup> It was a new part for him, and the harder to play because he could not altogether lay aside his old character. But the force, and perhaps I should add the coarseness of his nature carried him through, and he succeeded in the end in getting what he wanted. His youngest daughter was a fit match in point of age for Sir John Villiers, Buckingham's brother; and he had the means of making it a desirable match in point of wealth. Buckingham, who had never come into personal collision with him and was always eager to advance his own kindred, took him into favor at once; and the King, who in spite of continual collisions and many causes of irritation and not unreasonable displeasure, seems to have retained a respect and even a kind of liking for the man, could not be long at enmity with one whom Buckingham favored. Within less than a month from the time when Coke received his *supersedeas* we find symptoms of returning grace.

"Sir Edward Coke," writes Edward Sherburn to Carleton on the 7th of December, 1616, "was the last week with the King at Newmarket, and, kissing his M. hands he received some kind promise also, which was to this effect: That although his M. had removed him from the place of Chief Justice for some special ends, as holding him not altogether so fit a man to do his M. service in that office, yet his meaning was not to lose so good a servant, but that he would have him in remembrance and employ him in some other condition. Which whether it may content Sir Edward, I know not; but I am sure the generality will be much affected to see him restored to honor."

Again on the 14th: —

"Sir Edward Coke hath been again with his M. since my last to your Lp. and it is generally reported that his M. will create him a Baron, sometime these holidays; for either his friends

<sup>1</sup> See "a letter of advice written to Sir Edward Coke, Lord Chief Justice of the King's Bench," first printed in the *Remains*, and commonly, though absurdly, attributed to Bacon.

(whereof the Queen and Prince are two) or else his money, or both together, hath so turned the current, as your Lp. may see which way the tide begins to run."

To the same effect, Chamberlain, writing a week later, reports : —

"The Lo. Coke was twice with the King at Newmarket, so well and graciously used that he is as jocund and jovial as ever he was. It is generally said he shall shortly be made a Baron ; but some interpret this kindness to be but for the compassing of a match for the L. Villiers' brother with one of his daughters."

But though the way seemed smooth, there were obstructions both in himself and in his house. For himself, he could not, when it came to the point, make up his mind to part with so large a portion as was expected ; while his wife was averse to the match altogether, and having a will about as strong as his own, and accustomed to choose the other way, was not likely to be accommodating. Already he was engaged in a dispute with her concerning the administration of her first husband's property, which had to be brought before the Council Table ; whereby the domestic dissension became the lawful property of Paul's walk, and supplied the newsmen of the time with very good entertainment in the absence of the Court. It happened also very unluckily that a suit for damages was at the same time pending against him on account of an act done while he was Chief Justice ; he having taken ordinary bail for the appearance of an Englishman to answer a charge of piracy against France, and thereby let him escape ; an act which it seems no one but himself would undertake to justify ; and which there were several willing enough to aggravate. Our knowledge of the proceedings in Council to which these things led happens to come from persons who had unusually good means of information ; and (being very good reporters) they shall tell the story themselves.

On the 15th of March, Chamberlain wrote to Carleton : —

“The Lord Coke is left in the suds, but sure it is God’s doing, according to the old saying, *perdere quos vult Jupiter prius dementat*. For if he had had the grace to have taken hold of the match offered by Sir John Villiers, it is assuredly thought that before this day he had been Lord Chancellor. But standing on terms to give but 10,000 marks with his daughter, when £10,000 was demanded, and sticking at £1,000 a year during her life (together with some idle words that he would not buy the King’s favor too dear, being so uncertain and variable), he hath let slip the occasion, and brought himself in danger (besides the disgrace) of paying double that sum, if he be convicted in the Star Chamber of somewhat that it is thought will be proved against him.”

On the 18th of May we hear of him again from a still better authority, — Secretary Winwood writing to Sir Thomas Lake : —

“We have had before us the Lady Hatton and Sir Edward Coke. I could have wished between themselves by common friends their differences had been determined. I believe he will acquit himself of that imputation which is laid upon him. But I doubt the matter of the bail in the cause of the governor of Dieppe will lie more heavy upon his heart. For his brother Judges do clear themselves, and it cannot be denied but the carriage was foul, and satisfaction must be made either by him or by the King. On Wednesday next Sir Ed. Coke is to appear before the Lords in both causes.”

Again on the 24th, Chamberlain reports to Carleton : —

“The Lord Coke and his Lady have great wars at the Council table. . . . What passed yesterday I know not yet. But the first time she came accompanied with the Lord Burghley and his Lady, the Lord Davers, the Lord Denny, Sir Thomas Howard and his Lady, with I know not how many more, and declaimed bitterly against him, and so carried herself that divers said Burbage could not have acted better. Indeed it seems he

hath carried himself very simply (to say no more) in divers matters, and no doubt he shall be sifted thoroughly; for the King is much incensed against him still, and by his own weakness he hath lost those few friends he had."

The nature of the dispute between the husband and wife is partly explained by another of Carleton's correspondents — George Gerrard — who writes on the 4th of June: —

"The Lady Hatton accused her husband by way of petition to the Council table for a contempt against the King in menacing her that if she set her hand unto those articles which the King had commanded him and my Lord of Exeter, he would make himself whole, double and treble, out of her estate. The business concerned Sir Rob. Rich and Sir Chr. Hatton. Upon the delivery of this petition Sir Edward Coke was sent for before the Council. A day was appointed for hearing of this business, when I was present. It grieved me to hear such differences between man and wife; but counsel of both sides speaking, the business was extremely aggravated. She chargeth him of menacing her of defeating her of her jointure; of having a propriety in her purchased land which he will not relinquish. His counsel make answer and charge her for having disfurnished and taken away out of three of his houses all hangings, plate, and household stuff, and also that she gave him to his face or by letter these unfit words of false treacherous villain. My Lord Keeper, willing to shut up this business, made a motion for the referring of it to the Lord Carew and the Chancellor of the Exchequer; who have since compromised the differences to both their contentments."

That the differences were settled for the time to their mutual satisfaction, we know by a letter from Winwood to Lake; which contains also intelligence of the result of the inquiry concerning the bailing of the pirate, and presents Coke in an attitude in which we have not hitherto seen him — acknowledging an error.

"The differences between Sir Edward Coke and his Lady are fully accommodated and determined to their mutual content-



ment. Now Sir Ed. Coke doth treat with the French Ambassador, and doth offer very frankly £2,000 for the error he committed about the bail he took in the King's Bench. The ambassador doth stand stiffly for the whole sum of £4,800, which is beyond all moderation, considering that the three sureties are liable to the sentence, against whom he may proceed. My care is to end this dispute, because his M. is particularly engaged in his honor to the satisfaction of the governor."

The terms in which Coke's quarrel with his wife was made up are not stated, but from Chamberlain's report (4 June, 1617) I gather that he did not succeed in carrying it all his own way.

"Sir Edward Coke and his Lady, after so much animosity and wrangling are lately made friends; and his curst heart hath been forced to yield to more than ever he meant; but upon this agreement he flatters himself that she will prove a very good wife. He hath likewise compounded with the French Ambassador for the bailing of a pirate which lay heavy upon him. Wherein the Queen by Mr. Secretary Winwood's means stood him in great stead: though it hath cost him the setting on, some say very near £4,000. But though he held it out a great while, yet he was driven at last to the old rule *redimas te captum quam queas minimo*."

So far, Coke's cause was not prospering. For it does not appear that Buckingham interceded in his behalf; and the King was supposed to be very well pleased with the result of the proceedings. Finding therefore that he had either over-estimated the force of the attraction or under-estimated the force of resistance on the other side, and that he must give way in the lesser matter if he would have his way in the greater, he made up his mind to mend his offer. About the middle of June he imparted his wishes to Winwood, who immediately conveyed them to Buckingham. His wish was to be restored to the King's favor, "without which, he at length professed, he could no longer breathe." He "acknowl-

edged with much sorrow his former disrespectful behavior" to Buckingham in relation to the treaty of marriage; "desiring that the same might be renewed, with very advantageous proposals on his part." It was on the 16th of June that Winwood sent Buckingham an account of this overture, which appears to have taken effect immediately. The treaty of marriage was at once reopened and pursued with eagerness on both sides; that is to say, by Coke himself on one side, and by the relations of Sir John Villiers on the other. The daughter, so far as I can make out, was passive. Not so the mother. In the articles of agreement upon which the husband and wife had so lately made peace, no provision had been made for this article of *disagreement*. Lady Hatton (who meaning to leave all her fortune to this daughter, thought she had a right to a voice in the disposal of her) vehemently opposed the match, and pretending that she was precontracted to the Earl of Oxford (who was away in Italy), carried her off privately to a place where she might be safe and free from persecution. And here it is that Bacon makes his first appearance in the business. What part he had taken in it at the Council Board or in private, or whether he had taken any part, we do not know. We have seen that the reference which withdrew their former domestic dispute from public discussion and brought about a reconciliation between the husband and wife was made upon his motion. But the question of the marriage of the daughter had not yet come before the Board, and we have no evidence that he had meddled in it. We shall find, however, by the next letter, that he knew Winwood to have been a principal agent in the making or renewing of the marriage treaty, and that there had been some discussion about it among the Counsellors. Now we know that about this time — at least as early as the 5th of July,<sup>1</sup> — he had a quarrel with Win-

<sup>1</sup> See Chamberlain's letter of that date. Bishop Goodman says, "The dif-

wood ; and it seems far from improbable that it arose out of a difference of opinion upon this question ; which, being reported to Buckingham, had caused those ominous appearances that led Bacon's correspondent, writing from Edinburgh on the 28th of June, to pray that nothing in the report of his proceedings might be "soiled, heated, or cooled" in its passage to the King's ear. It is certain that Buckingham was already out of humor with him for some reason. But however that may be, it was impossible now for Bacon to keep clear of the business any longer. For on finding that the mother had stolen away the daughter from her father's custody, Lady Compton, the mother of the Villierses, applied to Bacon on Coke's behalf for a warrant to recover possession of her. If it is true, as stated by Stephens, that a warrant from the King to some of his Privy Council "to summon before them his wife and her confederates, in order to recover his daughter," had already been applied for by Coke through Buckingham, it may be that she made this application to Bacon (though for a very different thing) by Buckingham's direction : in which case his subsequent behavior would be more easily accounted for. But if so, she certainly did not tell Bacon by whose authority she came : for he could not have written to Buckingham on the subject without taking notice of it ; as we shall presently see that he did. The warrant which she asked for he declined to grant — with very good judgment, as the event showed ; and at the same time resolved to make an appeal to Buckingham (whose feelings on the subject it is evident that he had not divined), advising him to

ference fell out upon a very small occasion, that Winwood did beat his dog from lying upon a stool, which Bacon seeing said that every gentleman did love a dog. This passed on ; then at the same time having some business to sit upon, it should seem that Secretary Winwood sat too near my Lord Keeper, and his Lordship willed him either to keep or to know his distance. Whereupon he arose from table, and *I did think he did him no good office.*" *Court of K. James I.*, vol. i., p. 283. The incident of the dog is probable enough as the *occasion* of such a quarrel, but hardly as the cause.

interpose and forbid all further attempts to force the marriage against the mother's consent.

This was the state of the case when the next letter was written ; which I now leave to speak for itself. It comes from Stephens's first collection, in which it is said to be printed "from the original;" one of the many originals known to Stephens of which I have not succeeded in finding any traces.

TO THE EARL OF BUCKINGHAM.

MY VERY GOOD LORD, — I shall write to your Lordship of a business which your Lordship may think to concern myself ; but I do think it concerneth your Lordship much more. For as for me, as my judgment is not so weak to think it can do me any hurt, so my love to you is so strong, as I would prefer the good of you and yours before mine own particular.

It seemeth Secretary Winwood hath officiously busied himself to make a match between your brother and Sir Edward Coke's daughter : and, as we hear, he doth it rather to make a faction, than out of any great affection to your Lordship. It is true, he hath the consent of Sir Edward Coke (as we hear) upon reasonable conditions for your brother, and yet no better than without question may be found in some other matches. But the mother's consent is not had, nor the young gentlewoman's, who expecteth a great fortune from her mother, which without her consent is endangered. This match, out of my faith and freedom towards your Lordship, I hold very inconvenient both for your brother and yourself.

First, He shall marry into a disgraced house, which in reason of state is never held good.

Next, He shall marry into a troubled house of man and wife, which in religion and Christian discretion is disliked.

Thirdly, Your Lordship will go near to lose all such

your friends as are adverse to Sir Edward Coke (myself only except, who out of a pure love and thankfulness shall ever be firm to you).

And lastly and chiefly (believe it), it will greatly weaken and distract the King's service; for though, in regard of the King's great wisdom and depth, I am persuaded those things will not follow which they imagine, yet opinion will do a great deal of harm, and cast the King back, and make him relapse into those inconveniences which are now well on to be recovered.

Therefore my advice is, and your Lordship shall do yourself a great deal of honor, if, according to religion and the law of God, your Lordship will signify unto my Lady your mother, that your desire is that the marriage be not pressed or proceeded in without the consent of both parents; and so either break it altogether, or defer any further dealing<sup>1</sup> in it, till your Lordship's return: and this the rather, for that (besides the inconvenience of the matter itself) it hath been carried so harshly and inconsiderately by Secretary Winwood, as for doubt that the father should take away the maiden by force, the mother, to get the start, hath conveyed her away secretly; which is ill of all sides. Thus hoping your Lordship will not only accept well, but believe my faithful advice, who by my great experience in the world must needs see further than your Lordship can, I ever rest,

Your Lordship's true and most devoted  
friend and servant,

FR. BACON, C. S.

I have not heard from your Lordship since I sent the King my last account of council business; but I assure myself you received it, because I sent at the same time a packet to Secretary Laque, who hath signified to me that he hath received it.

<sup>1</sup> 'delay' in Stephens's copy (which is our only authority for this letter, neither the original nor any independent copy having been found), but it cannot be the right word; 'dealing' is my own conjecture.

I pray your Lordship deliver to his Majesty this little note of Chancery business.

July 12, 1617.

On the afternoon of the day on which this letter was dated (if we may trust a contemporary report sent to Mrs. Sadler, Coke's daughter), Lady Hatton, accompanied by Lord Holles, came in great haste to seek Bacon's assistance. After an overturn by the way, "at last to my Lord Keeper's they come, but could not have instant access to him for that his people told them he was laid at rest, being not well. Then my La. Hatton desired she might be in the next room where my Lord lay, that she might be the first that [should] speak with him after he was stirring. The door-keeper fulfilled her desire and in the mean time gave her a chair to rest herself in, and there left her alone: but not long after, she rose up and bounced against my Lord Keeper's door, and waked him and affrighted him, that he called his men to him; and they opening the door, she thrust in with them, and desired his Lp. to pardon her boldness, but she was like a cow that had lost her calf, and so justified [herself] and pacified my Lord's anger, and got his warrant and my Lo. Treasurer's warrant and others of the Council to fetch her daughter from the father and bring them both to the Council."<sup>1</sup>

How it came that she had lost her calf, which according to the last account had been "conveyed away secretly," we learn from Chamberlain, who, writing to Carleton on the 19th of July, gives the following history.

"These eight or ten days here have been great stirs 'twixt the L. Coke and his Lady, about conveying away the younger daughter which she will no ways consent should match with Sir John Villiers, as the Lo. Coke had agreed, with £10,000

<sup>1</sup> From a letter among the MSS. at Trinity College, Cambridge, addressed to Mrs. Ann Sadler.

ready portion, 2000 marks yearly maintenance during his life, and £1,000 land after his decease. If he had offered these conditions when time was, and taken occasion by the forehead when she presented herself, they might have stood him in great stead; whereas now perhaps he doth but catch at the bald side. The daughter was first carried to the Lady Withipole's; from thence privily to a house of the Lord of Argile's at Hampton Court; whence her father with a warrant from Mr. Secretary fetched her, but indeed went further than his warrant and brake open divers doors before he got her. His Lady was at his heels, and if her coach had not tired in the pursuit after him, there was like to be strange tragedies."

So far I believe all is correct. Coke had obtained from Winwood the warrant which Bacon had refused, and this was the use he had made of it. The pressing business on which Lady Hatton came to Bacon was to get a warrant to recover her daughter out of the father's hands. And it may be that she had already had a race with him for the possession of her, and lost it by the breaking down of her carriage or horses. But another correspondent of Carleton's, writing a day or two later, represents her as armed at the time with a warrant from the Council Table; an important circumstance of which Chamberlain says nothing, and which I cannot reconcile with the most authentic narrative which has come down to us. At first sight it might be taken for the warrant which, according to Mrs. Sadler's correspondent, she obtained from the Lord Keeper, but that would be inconsistent with the report made by the Council to the King, which, for all positive statements made in it, must be taken for the highest authority: and the truth probably is that as the story passed from mouth to mouth the several stages got mixed together.

"The mother," says this news-writer, "mistrusting something, sent her daughter away privately into the country. Sir Ed. Coke learns with great cunning where she was, gets a warrant

from Sir Ralph Winwood to fetch her where'er she was, goes armed with a great troop of sons and men, bringeth her from thence. The mother she procureth a warrant from the Council table, whereto were many of the Councillors' hands, to take her again from him, goes to meet her as she should come up in the coach, with her the Lord Haughton, Sir Edward Sackville, Sir Rob. Rich, and others, with three score men and pistols. They met her not : if they had, there had been a notable skirmish ; for the Lady Compton was with Mrs. Franch in the coach, and there was Clem. Coke, my Lord's fighting son : and they all swore they would die in the place before they would part with her. The Council labored to appease this business. The young gentlewoman was placed with the King's Attorney ; from thence brought to Mr. Edmonds ; and in the end, after all the clamor, all made friends ; and no doubt it will be a match."

Now it is clear from the letter of the Council that no such warrant had been granted to Lady Hatton on Saturday the 12th (which was the day on which Coke brought Mrs. Franche away from her place of retreat) ; for it was on Sunday the 13th that she presented a petition to the Board, the tenor of which, and the proceeding upon it, is thus related : —

"There was a petition delivered unto us upon Sunday the 13 of this instant by the Lady Hatton, complaining in somewhat a passionate and tragical manner that while by his Majesty's grace she was settling and securing her poor fortune, she was by violence dispossessed of her child ; and informing us that in regard of her daughter's weak constitution she had sent her to Sir Edmond Withipole's house for a small time, and that it was not done in any secret manner. Whereupon Sir Edward Coke, never asking or taking account what was become of her, but pretending warrant, as he said, from the Board, had the day before, with his son and ten or eleven servants, weaponed, in violent manner repaired to the house where their daughter was remaining, and with a piece of timber or form broken open the door, and dragged her along to his coach ; with many other circumstances too long to trouble his Majesty withal.

"Whereupon, in regard the complaint contained matter of



riot and disturbance such as hath not happened since his Majesty's departure into Scotland, we appointed the Tuesday following for the hearing of Sir Edward Coke upon the same complaint.

"The matter being thus ordered, we fell to other business, and while we were in despatch thereof, the Lady Hatton came to the Council-chamber door, and desired to have access to the Board. Which being admitted, she was told that order was taken concerning her petition; but she, making further instance, desired her daughter might be forthwith sent for, in regard she was grown to that weakness by occasion of the violence and fright she had taken as was with speed to be looked unto for the safety of her life; and that therefore she might be brought to London that night, and remain in some place where she might have such help by physic and attendance as were requisite for her preservation and recovery. Which being thought reasonable in humanity, and for avoiding other inconveniences, a letter was written from the Board to Sir Edward Coke, acquainting him with his Lady's complaint and desire, and requiring him to deliver his daughter to Mr. Edmondes, Clerk of the Council, to be brought by him to London, and kept in his house until the hearing of the cause."

The warrant which had so nearly led to a collision (for there was a warrant answering the description, though with an important difference) was made out either that night or the next morning, and was a measure adopted by the Council in vindication of their own authority. For it seems that when the Clerk of the Council presented their letter to Coke on Sunday he said that it was late in the evening, that his daughter was in no such extremity, that "upon his peril he would deliver her at Mr. Edmondes' house the next morning," but "forbore" to do it then. Upon hearing which, the Board, "thinking their order neglected, and doubting whether he would keep promise, gave warrant *with a clause of assistance* to bring her to Mr. Edmondes' house accordingly." Coke, however, did deliver her the next

morning according to his promise; and bringing her luckily by a different road from that which the party with the warrant had taken, they did not meet. The warrant (says the letter from the Council) "by reason of several ways, missed to be served;" and thus the "notable skirmish" which Gerrard thought likely to have ensued was escaped.

The young lady being now under the protection of the Council, their next care was to keep her unmolested.

"After she was brought to Mr. Edmond's house according to his promise, we, hearing that many friends resorted thither on both sides, and doubting some disorder, gave directions that she should be kept private until the hearing, which was the next day, and two gentlewomen only to be admitted to her company, such as Sir Edward Coke and his Lady should choose; which was accordingly performed, Sir Edward Coke choosing the Lady Compton and his lady the Lady Burleigh."

The next day in the afternoon Coke appeared before the Council to answer the complaint contained in Lady Hatton's petition. He began his answer with a counter charge. He accused her of an intention to carry his daughter into France, in order to break off a match with Sir John Villiers: whom he also accused one of her servants of slandering. The Board declined all discussion as to the fitness of the match, declaring "that they thought that noble gentleman every way a worthy match for his daughter, and did not doubt but that he would seek her in a noble and religious fashion, without any forced consent of the maid, and with consent of both parents; and the rather because part of her fortune did depend upon the mother's disposing;" but called upon him for proof of these charges against his Lady and her servant: which he failed to produce; offering none at all for the first, and none that they considered satisfactory for the second. They then called on him for his answer to the charge of "riot and force:" upon which he did not

plead any warrant, but undertook to justify his proceeding by law. This amounted under the circumstances to an assertion that by law any father might at his own discretion break into anybody's house on pretense of seeking a fugitive daughter; and considering who he was that asserted it, they judged it necessary to deal with and settle the question.

“Upon all which matter the Board thought fit that because it appeared that so great a riot now in the King's absence, and by a person of that quality, was fit severely to be punished; the rather for that he called no constable or other officer unto him, as he confessed, but took upon him, being the party grieved, to be *vindex doloris proprii*, contrary to all government; and for that the King's Attorney being present maintained the law to be to the contrary, so as there was no fit means to admit him to his justification but by a legal prosecution: order was given by the Board that the Attorney General should prefer an information into the Court of Star Chamber against Sir Edward Coke for the force and riot used by him upon the house of Sir Edmond Withipole, to be in that court heard and sentenced as justice shall appertain.”

This order was given on Tuesday afternoon, the 15th of July, and it was the practical conclusion of the Council for the present upon the allegations in Lady Hatton's petition. But this course would take time, and how was the young lady to be disposed of in the interval?

“To prevent all new occasion of tumult or breach of peace, it was thought fit that their daughter should be disposed into some convenient place agreeable to her worth and quality until further order were taken. For which purpose choice was made, by consent of Sir Edward Coke and his lady, of the house of the Lord Knivett near Staines; and in the mean time, until the Lord Knivett should return his answer, she was disposed to the house of his Majesty's Attorney General. And we likewise enjoined Sir Edward Coke and his lady in the behalf of her friends to forbear all occasion of violence or disturbance whatso-

ever, as well touching the person of their daughter as any other matter or point concerning that business."

This was the end of that day's work: which I have been the more particular in relating, because it was all done, if not under Bacon's direction, at any rate with his full concurrence and approbation,—as avowed by himself afterwards when to have concurred in it was a matter of impatient reproach with the King and of deep offense with Buckingham. At the time, no doubt, he thought he was doing acceptable service. But before the act of Council recording it could be made ready for dispatch, a change had come over the aspect of the case. For the King, with whom there had not been time to communicate on the particular question while it was under deliberation, and whose wishes concerning the match appear to have been known only to Winwood, could see nothing wrong in what Coke had done. In his eyes "the thefteous stealing away of the daughter from her own father" was the great offense; and what followed was but "redress of the former violence."<sup>1</sup> This being so, the prosecution in the Star Chamber could not proceed; the interference of the Council in the second removal of the daughter from her father was by implication censured; and whoever wished to please the King knew that he must take part with those who favored the match.

How it happened that the King's wishes were known to Winwood and not to Bacon, is not explained. It could not have been an object either with the King or with Buckingham to let the most important member of the Council continue in the belief that he was serving them as they would wish, when he was really crossing their ends.<sup>2</sup> It must surely have been Winwood himself

<sup>1</sup> See the King's letter to Bacon printed a little farther on.

<sup>2</sup> If Buckingham gave Bacon credit for knowing that Lady Compton applied for the warrant with his concurrence, *he* might suppose that the King's wishes

who, having the secret (which he may easily have got from Lake, with whom he was in continual and confidential correspondence), kept it to himself for purposes of his own. That he had for some time had the means of enlightening his fellow-councillors, appears from the circumstances under which the revelation was ultimately made. We do not know the exact date: but it must have been between the 15th and the 19th of July that the following scene, as reported by Chamberlain (who may have had it from Winwood himself), took place.

After mentioning the order to prefer a bill against Coke in the Star Chamber (which was made on the 15th of July) he goes on to say: —

“He and his friends complain of hard measure from some of the greatest at that board, and that he was too much trampled upon with ill language. And our friend [*i. e.* Winwood] passed not scot free for the warrant; which the greatest [ ]  
er<sup>1</sup> there said was subject to a *præmunire*; and withal told the Lady Compton that they wished well to her and her sons, and would be ready to serve the Earl of Buckingham with all true affection, whereas others did it out of faction and ambition; which words glancing directly at our good friend, he was driven to make his apology; and to show how it was put upon him from time to time by the Queen and the other parties; and for conclusion showed a letter of approbation of all his courses from the King; making the whole table judge what faction and ambition appeared in this carriage. *Ad quod non fuit responsum.*”

This altered the whole matter. It could not be the business of the King's Council in a case of this kind to work in opposition to his declared purposes. It became their duty not only to suspend, but if possible to reverse their action. Accordingly the Attorney General applied himself to bring about a reconciliation between the par-

were already known to him. But *Winwood* must have known that they were not: and he cannot have thought that *they* wished Bacon to remain in ignorance.

<sup>1</sup> The beginning of this word, which comes at the end of a line, is worn off; but the *er*, which begins the next, is quite legible.

ents. The young lady (who had been left under his charge) was on the 18th of July, upon what Chamberlain calls "a palliated agreement between Sir Edward Coke and his Lady," "sent home to Hatton House, with orders that the Lady Compton and her son should have access to win her and wear her." And the following sentence was added by way of postscript to the letter from the Council to the King : —

"But now since, this matter seemeth to have had a fairer conclusion ; for that we find that the writings are perfected, and not only so, but the parties, Sir Edward Coke and his Lady, reconciled, and the daughter with both their good likings sent to live with her father and mother in Sir Edward Coke's house. Which good end hath been much furthered by the charitable endeavor of his Majesty's Attorney General. And the information, and all other proceedings in the business, is suspended and left wholly to his Majesty's pleasure."

The date of this letter from the Council is not certainly known. But I take it to have been sent on the 19th of July. For Winwood, writing on that day to Lake, says : "By the letters you receive from the Lords you will see what trouble Sir Edward Coke and his Lady have given the Lords." Now the letter in question cannot have been written before the 18th, if Chamberlain's date is correct ; and it is not likely that another letter on the same subject was sent at that time. But however that may be, it was written *after* Bacon had heard from Winwood what the King's views were, and *before* he had heard anything from the King himself. His own opinion he supposed the King to know from his letter to Buckingham ; but to that he had received no answer. Indeed there had hardly been time as yet. But when a fortnight had passed without bringing one, he wrote directly to the King. His opinion of the impolicy of the match had not been altered by anything which had passed ; he was not prepared either to disavow or correct

it; and he still wished the King to hear the reasons on which it was grounded,—those reasons especially which concerned the state. What they were is fully explained in the next letter.

#### TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — I think it agreeable to my duty, and the great obligation wherein I am tied to your Majesty, to be freer than other men in giving your Majesty faithful counsel while things are in passing, and more bond than other men in doing your commandments when your resolution is settled and made known to me.

I shall therefore most humbly crave pardon from your Majesty if in plainness and no less humbleness I deliver to your Majesty my honest and disinterested opinion in the business of the match of Sir John Villiers, which I take to be *magnum in parvo*, preserving always the laws and duties of a firm friend to my Lord of Buckingham, whom I will never cease to love, and to whom I have written already, but have not heard yet from him.

But first I have three suits to make to your Majesty, hoping well you will grant them all.

The first is, that if there be any merit in drawing on that match, your Majesty would bestow the thanks, not upon the zeal of Sir Edward Coke to please your Majesty, nor upon the eloquent persuasions or pragmatics of Mr. Secretary Winwood; but upon them who, carrying your commandments and directions with strength and justice (in the matter of the governor of Diepe, in the matter of Sir Robert Rich, and in the matter of protecting the lady according to your commandment), have so humbled Sir Edward Coke, as he seeks now that with submission, which (as your Majesty knows) before he rejected with scorn. For this is the true orator that hath persuaded this business, as I doubt not but your Majesty in your excellent wisdom doth easily discover.

My second suit is, that your Majesty would not think me so pusillanimous, as that I, who when I was but Mr. Bacon, had ever through your Majesty's favor good reason at Sir Edward Coke's hands when he was at the greatest, should now that your Majesty (by your great goodness) hath placed me so near your chair (being as I hope by God's grace and your instructions made a servant according to your heart and hand), fear him or take umbrage of him in respect of mine own particular.

My third suit is, that if your Majesty be resolved the match shall go on, after you have heard my reasons to the contrary, I may receive therein your particular will and commandments from yourself, that I may conform myself thereunto: imagining with myself (though I will not wager upon women's minds) that I can prevail more with the mother than any other man. For if I should be requested in it from my Lord of Buckingham, the answer of a true friend ought to be, that I had rather go against his mind than against his good: but your Majesty I must obey; and besides I shall conceive that your Majesty out of your great wisdom and depth doth see those things which I see not.

Now therefore, not to hold your Majesty with many words, which do but drown matter: Let me most humbly desire your Majesty to take into your royal consideration, that your state is at this time not only in good quiet and obedience, but in good affection and disposition. Your Majesty's prerogative and authority having risen some just degrees above the horizon more than heretofore, which hath dispersed vapors. Your Judges are in good temper. Your Justices of peace, which is the body of the gentlemen of England, grow to be loving and obsequious, and to be weary of the humor of ruffling. All mutinous spirits grow to be a little poor, and to draw in their horns, and not the less for your Majesty's disauthorising the man I now speak of.



Now then I reasonably doubt that if there be but an opinion of his coming in with the strength of such an alliance, it will give a turn and a relapse in men's minds unto the former state of things, hardly to be holpen, to the great weakening of your Majesty's service.

Again, your Majesty may have perceived that as far as it was fit for me in modesty to advise, I was ever for a Parliament; which seemeth to me to be *cardo rerum* or *summa summarum* for the present occasions; but this my advice was ever conditional, that your Majesty should go to a Parliament with a council united and not distracted; and that, your Majesty will give me leave never to expect, if that man come in; not for any difference of mine own, for I can be *omnibus omnia* for your Majesty's service, but because he is by nature insociable, and by habit popular, and too old now to take a new ply, and men begin already to collect, yea and to conclude, that he that raiseth such a smoke to get in, will set all on fire when he is in.

It may please your Majesty, now I have said I have done; and as I think I have done a duty not unworthy the first year of your last high favor. I most humbly pray your Majesty to pardon me if in anything I have erred; for my errors shall always be supplied by obedience. And so I conclude with my prayers for the happy preservation of your person and state.

Your Majesty's most humble, bounden,  
and most devoted servant,

FR. BACON, C. S.

From GORHAMBURY, this 25th of July, 1617.

To this letter the King returned a full reply in another which has unluckily been lost, and of which we can only infer the style and substance from Bacon's answer. The reasons, as far as they related to his own service, he appears to have rejected with some disdain.

He considered Coke's proceeding in pursuit of his daughter as a lawful and ordinary thing, no way justifying the stir that had been made about it. He found fault with the tone of Bacon's letter to Buckingham, as implying a want of respect for his discretion ; and charged him with ingratitude in opposing the match, when he knew how much Buckingham desired it.

Buckingham himself still kept silence, and before the King's answer arrived, Bacon addressed to him the two letters which come next.

TO THE EARL OF BUCKINGHAM.

MY VERY GOOD LORD, — I do think long to hear from your Lordship touching my last letter, wherein I gave you my opinion touching your brother's match. As I then showed my dislike of the matter, so the carriage of it here in the manner I dislike as much. If your Lordship think it is humor or interest in me that leads me, God judge my sincerity. But I must say, that in your many noble favors towards me, they ever moved and flowed from yourself, and not from any of your friends whatsoever ; and therefore in requital give me leave that my counsels to you again be referred to your happiness, and not to the desires of any of your friends. I shall ever give you, as I give my master, safe counsel and such as time will approve.

I received yesterday from Mr. Attorney the Queen's bill, which I send your Lordship. The payment is not out of lands, but out of the customs, and so it can be but the rent. Your Lordship remembereth, it is but in a case which I hope shall never be : that is, after his Majesty's death, if she survive. God ever bless and direct you.

Your Lordship's most faithful

and devoted friend and servant,

FR. BACON, C. S.

GORHAMBURY, this 25th of July, 1617.

## TO THE EARL OF BUCKINGHAM.

MY VERY GOOD LORD, — I have sent inclosed a letter to his Majesty concerning the strangers: in which business I had formerly written to your Lordship a joint letter with my Lord of Canterbury, and my Lord Privy-Seal, and Mr. Secretary Winwood. I am, I thank God, much relieved with my being in the country-air, and the order I keep; so that of late years I have not found my health better. Your Lordship writeth seldomer than you were wont; but when you are once gotten into England, you will be more at leisure. God bless and prosper you.

Your Lordship's true and devoted

friend and servant,

FR. BACON, C. S.

GORHAMBURY, 29 July, 1617.

It will be seen from the tone of these letters that though Bacon was beginning to feel anxious about the state of Buckingham's mind and temper towards him, he did not as yet think it right to assume that he was offended. At last his answer came and removed all doubt on that head. It showed him in a humor which, though to us who know him best by his later manifestations it seems natural and characteristic, must have been to Bacon a new and alarming revelation. Nothing like it had appeared in him hitherto. He had invited Bacon's advice on some occasions, and had received it uninvited on others, with all appearance of respect and gratitude; and though it had always been the advice of an affectionate friend, it had never been that of a flatterer. Only good offices on either side had passed between them, nor had any unworthy conditions been exacted or offered; for Weldon's story of the interchange of messages when Bacon received the seals, being utterly irreconcilable with all the recorded evidence, may be set aside without any scruple as a mere invention. The revelation made by

this letter was that Buckingham could not bear to have his humor crossed, even by those whom he most respected. It is possible indeed that the offense in this case was given less by Bacon's own letter than by what had been told of him by rivals and enemies; and we have no means of knowing what that was. It is quite possible that, as represented by Winwood or Coke, his conduct would have justified displeasure. But it is not the less certain that in taking such deep offense and acting upon it without asking for an explanation, Buckingham showed a temper which must always have been in danger of betraying him into injustice.

The letter (of which we have only a copy) bears no date. But as I find from Stephens's catalogue that there was once to be seen a letter from Bacon to Buckingham, dated "6 Aug., 1617," beginning "I have at last received": and described as "showing his acquiescence in the match;" I conclude that that was the answer to this; and therefore that this was written about the end of July or the beginning of August.<sup>1</sup>

There will be found indeed in Bacon's next letter a passage which (if correct) implies that it was not received for five weeks after the 12th of July, which would bring it to the 16th of August. But that supposition involves so many other difficulties that I prefer to suppose five a mistake for three; in which case no difficulty would occur.

#### TO THE LORD KEEPER BACON.

MY LORD,—If your man had been addressed only to me, I should have been careful to have procured him a more speedy dispatch: but now you have found another way of address, I am excused; and since you are grown weary of employing me,

<sup>1</sup> From another entry in Stephens's catalogue it appears that Buckingham's answer to Bacon's letter of the 25th was dated 9 Aug., 1617. But as the note of the contents does not suit this one, we may infer that it was written before, and was an answer to Bacon's letter of the 12th of July.

I can be no otherwise in being employed. In this business of my brother's that you overtrouble yourself with, I understand from London by some of my friends that you have carried yourself with much scorn and neglect both toward myself and friends; which if it prove true I blame not you but myself, who was ever

Your Lordship's assured friend,

G. BUCKINGHAM.

The shock which such a letter as this would naturally produce on Bacon must have been much aggravated by that other which he received (as I suppose) shortly after, and which showed that the King, instead of using his influence to correct this fault in his favorite, was disposed to flatter and inflame it by taking his part and adopting his resentments. Blind partiality for another, — incapacity to see a fault or admit a doubt — which in some relations passes for a virtue, — is a cruel weakness when it comes from those who are or should be in authority. Clarendon says it was Buckingham's single misfortune "that he never made a noble and a worthy friendship with a man so near his equal that he would frankly advise him for his honor and true interest against the current, or rather the torrent, of his impetuous passions;" and that "if he had been blessed with one faithful friend who had been qualified with wisdom and integrity," he "would have committed as few faults and done as transcendent worthy actions as any man who shined in such a sphere in that age in Europe." But the truth was that he would not allow any man to *continue* his friend who offered him such advice; and he was quite as ready to quarrel with an equal as with an inferior, the instant that he opposed his inclination. The King was the only man who could have corrected his faults; and the King was blinded by his affection; could not see them; and did in fact aggravate them. The case of Buckingham was simply the case of a spoiled child, — only on a larger scale

and a higher stage than it was ever exhibited on before, — a very fine nature ruined by the most dangerous of all forms of flattery, — the unconscious flattery of immoderate admiration and affection.

The letter which revealed this condition of the King's mind to Bacon has disappeared, as I said. But the tenor of it may be gathered from Bacon's answer, which comes next in order, and together with the four letters which follow, may be left to tell its story without further comment. As printed in former editions, this part of the correspondence was very perplexing by reason of the dates, which between false copies and false inferences had fallen into incorrigible disorder. Being now presented in their proper sequence (and we may be certain of the order of succession though not always of the exact date) they will be found sufficiently intelligible.

#### TO THE KING.

MAY IT PLEASE YOUR MOST EXCELLENT MAJESTY, — I do very humbly thank your Majesty for your letter, and think myself much honored by it. For though it contain some matter of dislike, in which respect it hath grieved me more than any event which hath fallen out in my life: yet because I know reprehensions from the best masters to the best servants are necessary, and that no chastisement is pleasant for the time, but yet worketh good effects, and for that I find intermixed some passages of trust and grace, and find also in myself inwardly sincerity of intention and conformity of will, howsoever I may have erred, I do not a little comfort myself, resting upon your Majesty's accustomed favor, and most humbly desiring that any one of my particular actions may be expounded by the constant and direct course which your Majesty knoweth I have ever held in your service.

And because it hath pleased your Majesty of your singular grace and favor to write fully and freely unto

me, it is duty and decorum in me not to write shortly to your Majesty again, but with some length ; not so much by way of defense or answer (which yet I know your Majesty would always graciously hear and admit) as to show that I have, as I ought, weighed every word of your Majesty's letter.

First, I do acknowledge that this match of Sir John Villiers is *magnum in parvo* in both senses that your Majesty speaketh. But your Majesty perceiveth well that I took it to be in a further degree *majus in parvo*, in respect of your service. But since your Majesty bid-deth me to confide upon your art of empire, I have done: for as the Scripture saith *to God all things are possible*, so certainly to wise Kings much is possible. But for the second sense that your Majesty speaketh of *magnum in parvo*, in respect of the stir about it, being but a most lawful and ordinary thing, I most humbly pray your Majesty to pardon me if I truly do signify to you that we here take the loud and vocal and as I may call it streperous carriage to have been far more on the other side, which indeed is the inconvenient, rather than the thing itself.

Now for the manner of my affection to my Lord of Buckingham, for whom I would spend my life, and that which is to me more, the cares of my life ; I must humbly confess that it was in this a little parent-like (this being no other term than his Lordship hath-heretofore vouchsafed to my counsels) ; but in truth (and it please your Majesty) without any grain of disesteem for his Lordship's discretion. For I know him to be naturally a wise man, of a sound and staid wit, as I have ever said unto your Majesty, and again I know he hath the best tutor in Europe. But yet I was afraid that the height of his fortune might make him too secure, and (as the proverb is) a looker-on sometimes seeth more than a gamester.

For the particular of a part of a true friend which your Majesty witnesseth that the Earl hath lately performed towards me in palliating some errors of mine ; it is no new thing with me to be more and more bound to his Lordship. And I am most humbly to thank (whatsoever it was) both your Majesty and him ; knowing well that I may and do commit many errors, and must depend upon your Majesty's gracious construction and favor for them, and shall have need of such a friend near your Majesty. For I am not so ignorant of mine own case but that I know I am come in with as strong an envy of some particulars, as with the love of the general.

For my opposition to this business which it seemeth hath been informed to your Majesty, I think it was meant (if it be not a thing merely feigned and without truth or ground) of one of these two things (for I will dissemble nothing with your Majesty). It is true that in those matters which by your Majesty's commandment and reference came before the table concerning Sir Edward Coke, I was sometimes sharp (it may be too much). But it was with end to have your Majesty's will performed, or else when methought he was more peremptory than became him in respect of the honor of the table. It is true also, that I disliked the riot or violence whereof we of your Majesty's Council gave your Majesty advertisement by our joint letter, and I disliked it the more because he justified it by law ; which was his old song. But in that act of council which was made thereupon, I did not see but all my Lords were as forward as myself, as a thing most necessary for preservation of your peace, which had been so carefully and happily kept in your absence. And all this had a fair end in a reconciliation made by Mr. Attorney, whereby both husband and wife and child should have kept together ; which if it had continued, I am persuaded the match had been in better and fairer forwardness than now it is.



Now for the times of things, I beseech your Majesty to understand that which my Lord of Buckingham will witness with me, that I never had any word of letter from his Lordship of the business till I wrote my letter of advice; nor again after my letter of advice till five weeks after, which was now within this sennight. So that although I did in truth presume that the Earl would do nothing without your Majesty's privity, yet I was in some doubt by this his silence of his own mind, that he was not earnest in it, but only was content to embrace the officious offers and endeavors of others.

But to conclude this point, after I had received by a former letter of his Lordship knowledge of his mind, I think Sir Edward Coke himself the last time he was before the Lords mought plainly perceive an alteration in my carriage. And now that your Majesty hath been pleased to open yourself to me, I shall be willing to further the match by anything that shall be desired of me, or that is in my power.

And whereas your Majesty conceiveth some dregs of spleen in me by the word "Mr. Bacon;" truly it was but to express in thankfulness the comparative of my fortune unto your Majesty the author of it, as the better to show how little I needed to fear, while I had your favor; for I thank God I was never vindicative nor implacable.

As for my opinion of prejudice to your Majesty's service (as I touched it before) I have done with it. Your Majesty being satisfied, I do humbly acquiesce and anchor upon your Majesty's judgment, who unto judgment have also power so to mingle the elements as may conserve the fabric.

For the interest which I have in the mother, I do not doubt but it was increased by this, that I in judgment (as I then stood) affected that which she did in passion. But I think the chief obligation was, that I stood so

firmly to her in the matter of her assurance, wherein I supposed I did your Majesty's service, and mentioned it in a memorial of council-business (as half craving thanks for it). And sure I am now, that and the like hath made Sir Edward Coke a convert, as I did write to your Majesty in my last.

For the collation of the two spirits, I shall easily subscribe to your Majesty's censure: for Solomon were no true man, if in matter of malice the woman should not be the superior.

To conclude, I have gone though, with the plainness of truth, the parts of your Majesty's letter, very humbly craving pardon for troubling your Majesty so long; and most humbly praying your Majesty to maintain me in your grace and favor, which is the fruit of my life upon the root of a good conscience. And although time in this business have cast me upon a particular which I confess may have probable show of passion or interest; yet God is my witness that the thing that most moved me was an anxious and solicitous care of your Majesty's state and service, out of consideration of the time past and present.

God ever preserve and bless your Majesty, and send you a joyful return after your prosperous journey.

#### TO THE LORD KEEPER.

MY LORD, — I have received your Lordship's letter by your man; but having so lately imparted my mind to you in my former letters, I refer your Lordship to those letters, without making a needless repetition, and rest

Your Lordship's at command,

G. BUCKINGHAM.

ASHTON, the 12th of Aug., 1617.

#### TO THE EARL OF BUCKINGHAM.

MY VERY GOOD LORD, — Since my last to your Lordship I did first send for Mr. Attorney General, and made

him know that since I heard from court I was resolved to further the match and the conditions thereof for your brother's advancement the best I could. I did send also to my Lady Hatton and some of her special friends, to let them know I would in anything declare for the match; which I did to the end that if they had any apprehension of my assistance they might be discouraged in it. I sent also to Sir John Butler, and after by letter to my Lady your mother, to tender my performance of any good office towards the match or the advancement from the mother. This was all I could think of for the present.

I did ever fear that this alliance would go near to leese me your Lordship that I hold so dear, and that was the only respect particular to myself that moved me to be as I was, till I heard from you. But I will rely upon your constancy and nature, and my own deserving, and the firm tie we have in respect of the King's service.

In the mean time I must a little complain to your Lordship, that I do hear my Lady your mother and your brother Sir John do speak of me with some bitterness and neglect. I must bear with the one as a lady and the other as a lover, and with both for your Lordship's sake, whom I will make judge of anything they shall have against me. But I hope, though I be true servant to your Lordship, you will not have me vassal to their passions, especially as long as they [are] governed by Sir Edward Coke and Secretary Winwood; the latter of which I take to be the worst; for Sir Edward Coke, I think, is more modest and discreet. Therefore your Lordship shall do me right, and yet I shall take it for a favor, if you signify to them that you have received satisfaction from me, and would have them use me friendly and in good manner. God keep us from these long journeys and absence, which makes misunderstandings and gives ad-

vantage to untruth, and God ever prosper and preserve your Lordship.

Your Lordship's true and devoted friend and servant,

FR. BACON, C. S.

GORHAMBURY, 23 of Aug., 1617.

THE KING TO THE LORD KEEPER.

JAMES R. — Right trusty and well-beloved Counsellor, we greet you well.

Although our approach doth now begin to be near London, and that there doth not appear any great necessity of answering your last letter since we are so shortly to be at home: Yet we have thought good to make some observations to you upon the same, that you may not err by mistaking our meaning. The first observation we are to make is, That whereas you would invert the second sense wherein we took your *magnum in parvo*, in accounting it to be made *magnum* by their streperous carriage that were for the match, we cannot but show you your mistaking therein. For every wrong must be judged by the first violent and wrongous ground whereupon it proceeds, and was not the thefteous stealing away of the daughter from her own father the first ground whereupon all this great noise hath since proceeded? For the ground of her getting again came upon a lawful and ordinary warrant subscribed by one of our Council for redress of the former violence, and except the father of a child might be proved to be either lunatic or idiot, we never read in any law that either it could be lawful for any creature to steal his child from him or that it was matter of noise and streperous carriage for him to hunt for the recovery of his child again.

Our next observation is, That whereas you protest of your affection to Buckingham, and thereafter confess that it is in some sort *parent-like*, yet after that you have praised his natural parts, we will not say that you throw all down by a direct imputation upon him, but we are sure you do not deny to have had a greater jealousy of his discretion than (so far as we conceive) he ever deserved at your or any man's hands; for you say that you were afraid that the height of his fortune might make him too secure, and so as a looker-on you might sometime see more

than a gamester. Now we know not how to interpret this in plain English otherwise than that you were afraid that the height of his fortune might make him misknow himself. And surely if that be your *parent-like affection* toward him he hath no obligation to you for it. And for our part, besides our own proof that we find him furthest from that vice of any courtier that ever we had so near about us, so do we fear that you shall prove the only phoenix in that jealousy of all the kingdom; for we would be very sorry that the world should apprehend that conceit of him; but we cannot conceal that we think it was least your part of any to enter into that jealousy of him, whom of we have heard you oft speak in a contrary style. And as for that error of yours which he lately palliated whereof you seem to pretend ignorance, the time is so short since you commended to him one<sup>1</sup> to be of the Barons of our Exchequer in Ireland, as we cannot think you to be so short of memory as to have forgotten how far you undertook in that business before acquainting us with it, what a long journey you made the poor man undertake, together with the slight recommendation you sent of him, which drave us to those straits that both the poor man had been undone and your credit a little blasted if Buckingham had not by his importunity made us both grant your more than suit (for you had already acted a part of it), and likewise run a hazard of the hindrance of our own service, by preferring a person to so important a place whom you so slightly recommended.

Our third observation is upon the point of your opposition to this business, wherein you either do or at least would seem to mistake us a little. For first, whereas you excuse yourself of the oppositions you made against Sir Edward Coke at the council table both for that and other causes, we never took upon us such a patrociny of Sir Edward Coke, as if he were a man not to be meddled withal in any case, for whatsoever you did against him by our employment and commandment, we ever allowed it and still do for good service on your part; *de bonis operibus non lapidamus vos*; but whereas you talk of the riot and violence committed by him, we wonder you make no mention of the riot

<sup>1</sup> Mr. Lowder. See above, p. 220.

and violence of them that stale away his daughter, which was the first ground of all that noise, as we said before; for a man may be compelled by manifest wrong beyond his patience, and the first breach of that quietness which hath ever been kept since the beginning of our journey was made by them that committed the theft. And for your laying the burden of your opposition upon the whole council, we meddle not with that question; but the opposition which we justly find fault with you, was the refusal to sign a warrant for the father to the recovery of his child, clad with those circumstances (as is reported) of your slight carriage to Buckingham's mother when she repaired to you upon so reasonable an errand. What further opposition you made in that business, we leave it to the due trial in the own time. But whereas you would distinguish of times, pretending ignorance either of our meaning or his when you made your opposition, That would have served for a reasonable excuse not to have furthered such a business till you had been first employed in it, but that can serve for no excuse of crossing anything that so nearly concerned one whom you profess such friendship unto. We will not speak of obligation, for surely we think even in good manners you had reason not to have crossed anything wherein you had heard his name used, till you had heard from him; for if you had willingly given your consent and hand to the recovery of the young gentlewoman, and then written both to us and to him what inconvenience appeared to you to be in such a match, that had been the part indeed of a true servant to us and a true friend to him; but first to make an opposition and then to give advice by way of friendship, is to make the plough to go before the horse.

Thus leaving all the particulars of your carriage in this business to the own proper time, which is ever the discoverer of truth, We commend you to God. Given under our signet at Nantwich, in the fifteenth year of our reign of Great Britain, etc.

TO THE KING.

IT MAY PLEASE YOUR MOST EX<sup>T</sup> MA.,—I dare not presume any more to reply upon your Majesty, but reserve my defense till I attend your Majesty at your happy

return ; when I hope verily to approve myself not only a true servant to your Majesty, but a true friend to my Lord of Buckingham. And for the times also, I hope to give your Majesty a good account, though distance of place may obscure them.

But there is one part of your Majesty's letter that I would be sorry to take time to answer ; which is, that your Majesty conceiveth that, whereas I wrote that the height of my Lord's fortune mought make him secure, I meant that he was turned proud or unknown of himself. Surely the opinion which I have ever had of my Lord (whereof your Majesty is best witness) is far from that. But my meaning was plain and simple. That his Lordship mought through his great fortune be the less apt to cast and foresee the unfaithfulness of friends and malignity of enviers and accidents of times : which is a judgment (as your Majesty knoweth better than I) that the best authors make of the best and best tempered spirits, *ut sunt res humanæ* ; insomuch as Guicciardine maketh the same judgment (not of a particular person) but of the wisest state of Europe, the senate of Venice, at one time ; when he saith, their prosperity had made them secure and underweighers of perils. Therefore I beseech your Majesty to deliver me in this from any the least imputation upon my dear and noble Lord and friend.

And so expecting that that sun which when it went from us left us cold weather, and now it is returned towards us hath brought with it a blessed harvest, will when it cometh to us disperse all mists and mistakings, I ever rest

Your M.'s most humble,

bounden and faithful servant,

FR. BACON, C. S

GORHAMBURY, this 31 of Aug., 1617.

The King was by this time as far as Coventry on his way back from Scotland, and both Coke and Yelverton

had gone to meet him. Coke had arrived first and been well received, and on the 3d of September Yelverton sent Bacon a full and confidential report of the state of things, every particular of which was of so much importance to him in the way of warning, that in order to understand his position it will be worth while to read the whole.

MY MOST WORTHY AND HONORABLE LORD, — I dare not think my journey lost, because I have with much joy seen the face of my master, the King, though more clouded towards me than I looked for.

Sir Edward Coke hath not forborne by any engine to heave both at your Honor and at myself; and he works by the weightiest instrument, the Earl of Buckingham, who as I see sets him as close to him as his shirt, the Earl speaking in Sir Edward's phrase, and as it were menacing in his spirit.

My Lord, I emboldened myself to assay the temper of my Lord of Buckingham to myself, and found it very fervent, misled by misinformation which yet I find he embraced as truth, and did nobly and plainly tell me he would not secretly bite, but whosoever had had any interest or tasted of the opposition to his brother's marriage he would as openly oppose them to their faces, and they should discern what favor he had by the power he would use.

In the passage between him and me, I stood with much confidence upon these grounds: —

First, that neither your Lordship nor myself had any way opposed, but many ways had furthered the fair passage to the marriage.

Secondly, that we only wished the manner of Sir Edward's proceedings to have been more temperate, and more nearly resembling the Earl's sweet disposition.

Thirdly, that the chiefest check in the business was Sir Edward himself, who listened to no advice, who was so transported with passion, as he purposely declined the even way which your Lordship and the rest of the Lords left both him his lady and his daughter in.



Fourthly, I was bold to stand upon my ground, and so I said I knew your Lordship would, that these were slanders which were brought him of us both; and that it stood not with his honor to give credit to them.

After I had passed these straits with the Earl, leaving him leaning still to the first relation of envious and odious adversaries, I adventured to approach his Majesty, who graciously gave me his hand to kiss, but intermixed withal that I deserved not that favor, if three or four things were true which he had to object against me. I was bold to crave his princely justice, first to hear, then to judge, which he graciously granted, and said he wished I could clear myself. I answered, I would not appeal to his mercy in any of the points, but would endure the severest censure if any of them were true; whereupon he said he would reserve his judgment till he heard me, which could not be then, his other occupations pressed him so much. All this was in the hearing of the Earl; and I protest I think the confidence in my innocency made me depart half justified, for I likewise kissed his Majesty's hand at his departure, and though out of his grace he commanded my attendance to Warwick, yet upon my suit he easily inclined to give me the choice to wait on him at Windsor or at London.

Now, my Lord, give me leave out of all my affections that shall ever serve you, to intimate touching yourself:

1st. That every courtier is acquainted that the Earl professeth openly against you as forgetful of his kindness, and unfaithful to him in your love and in your actions.

2d. That he returneth the shame upon himself, in not listening to counsel that dissuaded his affection from you, and not to mount you so high, not forbearing in open speech (as divers have told me, and this bearer, your gentleman, hath heard also) to tax you, as if it were an inveterate custom with you, to be unfaithful to him as you were to the Earls of Essex<sup>1</sup> and Somerset.

3d. That it is too common in every man's mouth in court, that your greatness shall be abated, and as your tongue hath been as a razor to some, so shall theirs be to you.

<sup>1</sup> It is a singular thing that this is the only allusion to the old charge of ingratitude to Essex — made by a contemporary, during Bacon's life, and after the publication of his *Apology* — that I have yet met with.

4th. That there is laid up for you, to make your burden the more grievous, many petitions to his Majesty against you.

My Lord, Sir Edward Coke, as if he were already upon his wings, triumphs exceedingly ; hath much private conference with his Majesty ; and in public doth offer himself and thrust upon the King with as great boldness of speech as heretofore.

It is thought and much feared that at Woodstock he will again be recalled to the council table ; for neither are the Earl's eyes nor his thoughts ever off him.

Sir Edward Coke with much audacity affirmeth his daughter to be most deeply in love with Sir John Villiers, that the contract pretended with the Earl is counterfeit, and the letter also that is pretended to come from the Earl.

My noble Lord, if I were worthy being the meanest of all to interpose my weakness, I would humbly desire,

1. That your Lordship fail not to be with his Majesty at Woodstock ; the sight of you will fright some.

2. That you single not yourself from the other Lords, but justify all the proceedings as all your joint acts ; and I little fear but you pass conqueror.

3. That you retort the clamor and noise in this business upon Sir Edward Coke, by the violence of his carriage.

4. That you seem not dismayed, but open yourself bravely and confidently, wherein you can excell all subjects ; by which means I know you shall amaze some and daunt others.

I have abused your Lordship's patience long, but my duty and affection towards your Lordship shall have no end ; but I will still wish your Honor greater, and rest myself

Your Honor's servant,

HENRY YELVERTON.

DAVENTRY, Sept. 3, 1617.

I beseech your Lordship to burn this letter.

A day or two later, Bacon got some further light as to the state of the weather by the following letter from Buckingham himself conveying the King's answer to his last.

It would appear from the first sentence that some of his own letters to Buckingham at this crisis have been

lost; for there are none remaining which answer the description.

MY LORD, — I have received so many letters lately from your Lordship that I cannot answer them severally: but the ground of them all being only this, that your Lordship feareth I am so incensed against you that I will hearken to every information that is made unto me; this one letter may well make answer unto them all. As his Majesty is not apt to give ear to any idle report against men of your place; so for myself I will answer that it is far from my disposition to take any advantage in that kind; and for your Lordship's unkind dealing with me in this matter of my brother's, time will try all. His Majesty hath given me commandment to make this answer in his name to your letter to him, that he needeth not to make any other answer to you than that which in that letter you make to yourself. That you know his Majesty to be so judicious that whatsoever he heareth, he will keep one ear open to you; which being indeed his own princely disposition, you may be assured of his gracious favor in that kind. I will not trouble your Lordship with any longer discourse at this time, being to meet you so shortly, where will be better trial of all that hath passed than can be made by letters. So I rest

Your Lordship's at command,

G. BUCKINGHAM.

WARWICK, Sept. 5.

Such was the disposition in which the King and Buckingham were prepared to meet Bacon. But he had the advantage of a case in which there was really no just ground of complaint whatever; unless it were that he had refused to acknowledge the right of a father to break into other men's houses in order to rescue his daughter from her mother; for he had not interfered otherwise, except by offering advice with reasons, and those he had not pressed after they had been heard and rejected. Of the particulars of the meeting we have no account from any authority that can be trusted; for Weldon does not in my opinion deserve to be so much as quoted. But

from the correspondence which has been preserved I gather that presently after the King's return to London (which was on the 15th of September) Bacon desired to speak with him about a matter concerning his own safety, suggested by a case then before the Council: and that on the 21st or 22d of September he had an interview with Buckingham, at which he put into his hands a note of what he wanted to say to the King, and at the same time entered into explanations with regard to himself. The result will appear in the two letters which follow: —

FOR THE KING.

That which for the present I would have spoken with his Majesty about, was a matter wherein time may be precious, being upon the tenderest point of all others. For though the particular occasion may be despised (and yet nothing ought to be despised in this kind), yet the counsel thereupon I conceive to be most sound and necessary to avoid future perils.

There is an examination taken within these few days by Mr. Attorney concerning one Baynton, or Baynam (for his name is not yet certain), attested by two witnesses, that the said Baynton, without any apparent show of being overcome with drink (otherwise than so as mought make him less wary to keep secrets), said that he had been lately with the King to petition him for reward of service, which was denied him, whereupon it was twice in his mind to have killed his Majesty. God ever bless him.

The man is not yet apprehended, and said by some to be mad or half mad; which in my opinion is not the less dangerous; for such men commonly do most mischief, and the manner of the speaking imported no distraction.

But the counsel I would out of my care ground hereupon is, that his Majesty would revive the commission

for suits, which hath been now for these three years or more ill laid down. For it may prevent any the like wicked cogitation which the devil may put into the mind of a roarer or swaggerer upon a denial: and besides it will free his Majesty from much importunity, and save his coffers also. For I am sure when I was a commissioner, in three whole years'space there passed scarce ten suits that were allowed; and I doubt now, upon his Majesty's coming home from this journey, he will be much troubled with petitions and suits; which maketh me think this remedy more seasonable. It is not meant that suits generally should pass that way; but only such suits as his Majesty would be rid on.

THE EARL OF BUCKINGHAM TO THE LORD KEEPER.

MY LORD, — I have made his Majesty acquainted with your note concerning that wicked fellow's speeches, which his Majesty contemneth, as is usual to his great spirit in these cases; but notwithstanding, his Majesty is pleased that it shall be exactly tried, whether this foul-mouthed fellow was taken either with drunkenness or madness when he spake it. And as for your Lordship's advice for setting up again the commissioners for suits, his Majesty saith there will be time enough for thinking upon that at his coming to Hampton Court.

But his Majesty's direction in answer of your letter hath given me occasion to join hereunto a discovery unto you of mine inward thoughts, proceeding upon the discourse you had with me this day. For I do freely confess that your offer of submission unto me, and in writing (if so I would have it), battered so the unkindness that I had conceived in my heart for your behavior towards me in my absence, as out of the sparks of my old affection towards you I went to sound his Majesty's intention how he means to behave himself towards you, specially in any public meeting; where I found on the one part his Majesty so little satisfied with your late answer unto him, which he counted (for I protest I use his own terms) confused and childish, and his rigorous resolution on the other part so fixed that he would put some public exemplary mark upon you, as I pro-

test the sight of his deep-conceived indignation quenched my passion, making me upon the instant change from the person of a party into a peace-maker; so as I was forced upon my knees to beg of his Majesty that he would put no public act of disgrace upon you. And as I dare say no other person would have been patiently heard in this suit by his Majesty but myself, so did I (though not without difficulty) obtain thus much. That he would not so far disable you from the merit of your future service, as to put any particular mark of disgrace upon your person. Only thus far his Majesty protesteth, That upon the conscience of his office he cannot omit (though laying aside all passion) to give a kingly reprimand at his first sitting in council to so many of his councillors as were then here behind and were actors in this business, for their ill behavior in it. Some of the particular errors committed in this business he will name, but without accusing any particular persons by name.

Thus your Lordship seeth the fruits of my natural inclination, and I protest all this time past it was no small grief unto me to hear the mouth of so many upon this occasion open to load you with innumerable malicious and detracting speeches, as if no music were more pleasing to my ears than to rail of you: which made me rather regret the ill nature of mankind, that like dogs love to set upon him that they see once snatched at. And to conclude, my Lord, you have hereby a fair occasion so to make good hereafter your reputation by your sincere service to his Majesty, as also by your firm and constant kindness to your friends, as I may (your Lordship's old friend) participate of the comfort and honor that will thereby come to you. Thus I rest at last

Your Lordship's faithful friend and servant.

G. B.

The force of our old kindness hath made me set down this in writing unto you, which some that have deserved ill of me in this action would be glad to obtain by word of mouth, though they be far enough from it for ought I yet see. But I beseech your Lordship to reserve this secretly to yourself only, till our meeting at Hampton Court, lest his Majesty should be highly offended for a cause that I know.

## TO THE EARL OF BUCKINGHAM.

MY EVER BEST LORD, NOW BETTER THAN YOURSELF,  
— Your Lordship's pen or rather pencil hath portrayed towards me such magnanimity and nobleness and true kindness, as methinketh I see the image of some ancient virtue, and not anything of these times. It is the line of my life, and not the lines of my letter, that must express my thankfulness: wherein if I fail, then God fail me, and make me as miserable as I think myself at this time happy by this reviver, through his Majesty's singular clemency, and your incomparable love and favor. God preserve you, prosper you, and reward you for your kindness to

Your raised and infinitely obliged friend and servant,  
FR. BACON, C. S.

Sept. 22, 1617.

To pretend reconciliation when he was not reconciled was never the vice of Buckingham: and considering the depth of the offense which he had conceived against Bacon for his conduct, real or supposed, and the violence of the enmity which commonly succeeded in him to a renounced friendship, we may believe that on this occasion he had really achieved a considerable victory over himself, and that he deserved more of the credit which Bacon gave him than might otherwise seem to be his due, seeing that he did but give way where he had been grossly in the wrong. But when a man is disposed to do what is right, it is well to make it as agreeable to him as possible; and Bacon was probably well advised in magnifying the favor, and consenting to receive as generosity what was in fact nothing more than justice.

Buckingham being thus pacified, the King, whose resentments though lively were never long lived, was easily persuaded to receive Bacon back into favor, and the old

relations were presently reëstablished. But when friends have once quarrelled, they never can be to each other *quite* what they were before. During the quarrel they see each other with different eyes and learn to construe matters in less favorable senses. Thus they come to know many things which they did not know before, and which no reconciliation can make them forget. All this had happened within six months of the time when Bacon stood highest in the favor of both; and he had done nothing to deserve it. It was impossible for him henceforward to forget how precarious a possession their friendship and favor was, and how little he could depend for its continuance upon either diligence, or ability, or fidelity, or even upon the most anxious and affectionate solicitude for *their* good. With this difference, however, things returned into their old course, and the issue of all this turmoil may be thus summed up.

Coke got what he wanted, though he had been obliged to pay higher for it than he liked. On the 28th of September he was restored to the Council Table. The Villierses also got what they wanted. On the 29th Sir John married a young lady with a large portion. But the game had gone altogether against Lady Hatton. She had not only failed to bring her husband into the Star Chamber, and to save her daughter from a marriage which she (Lady H.) disliked; but she was threatened with prosecution herself. For the precontract with the Earl of Oxford proved to be a fiction, and the circumstances of the abduction brought her within danger of Court. "I have full cause," said Coke, writing to Buckingham on the 15th of July, "to bring all the confederates into the Star Chamber, for conveying away my child out of my house." And before he had been a fortnight at the Council Board again, steps were taken for this object. Lady Hatton, says Chamberlain, writing on the 11th of October, "lies still at Sir W. Craven's, crazy



in body and sick in mind. There is a commission to the Lord Keeper, the Lord Archbishop, Secretary Winwood, and I know not who else, to examine her of conspiracy, disobedience, and many other misdemeanors, and to proceed against her according as they shall find cause, but her sickness stands her in some stead for the time: and if she come again to herself it may be that in space there will grow grace. But sure she is in a wrong way now, and so animated towards her husband that it is verily thought she would not care to ruin herself to overthrow him." It seems, however, that she had not formally refused her consent to the marriage,<sup>1</sup> and she had one great card still in her hand. She might be sentenced and fined in the Star Chamber, but she could not be compelled to settle her fortune on the bride. This was to be obtained by another course of treatment, and by the end of October we find that she was again in favor. "For the King coming to town yesterday" — so Chamberlain writes on the 31st of October — "it was told me that the Earl of Buckingham meant to go himself and fetch her as it were in pomp from Sir William Craven's (where she hath been so long committed) and bring her to the King, who upon a letter of her submission is graciously affected towards her. But another cause is that seeing her yielding and as it were won to give allowance to the late marriage, he will give her all the contentment and countenance he can in hope of the great portion she may bestow upon her. For there is little or nothing more to be looked for from Sir Edward Coke, who hath redeemed the land he had allotted his daughter for £20,000, so that they have already had £30,000 of him paid down.

The marriage proved in the end unfortunate; but I

<sup>1</sup> "It is said that the mother's consent was obtained; the Lady protesting that howsoever she liked Sir John better than any other whatsoever, yet she desired to keep a solemn promise made to her mother, not to marry any man without her consent." Adam Newton to Sir Thomas Puckering: 30 (misdated 28) September, 1617. *Court and Times of James I.*, vol. ii., p. 34.

cannot think that the issue can be justly laid to the charge of those who brought it about. I find no reason for supposing that the young lady showed any aversion to her husband, or that her fancy was set upon anybody else. To please her mother, she was ready to acknowledge a precontract with the Earl of Oxford, which was not a fact: to please her father, she was ready to beg her mother's consent to her marriage with Sir John Villiers: while to please herself, it was rumored at the time, she would have preferred Sir Rob. Howard;<sup>1</sup> with whom it is true that she did afterwards elope. But I do not imagine that any one, looking forward, had a right to apprehend any worse consequences than such as commonly follow from what is commonly thought a "good" marriage, — a marriage of wealth to greatness.

<sup>1</sup> "If it be as is said, both mother and daughter are far enough from it, and have another aim at a younger son of the Lord Treasurer's." Chamberlain to Carleton, 19 July, 1617.

## CHAPTER IV.

A. D. 1617-1618. OCTOBER-DECEMBER. ÆTAT. 57-58.

THE reconciliation was followed by a long course of calm weather, in which Bacon's services were graciously accepted both by Buckingham and the King, and no misunderstandings arose. That this was purchased by a promise or a practice of unconditional compliance with all Buckingham's humors, is a thing obvious to conjecture and easy to assert; but I find nothing in the tone of the correspondence on either side which indicates any such alteration, nor would it have been like Buckingham, if I understand his character rightly, to make up a quarrel upon such a condition. If he had continued to believe that Bacon had done him wrong he would have continued openly to resent it. It was willing coöperation, not servile compliance, that he expected from his friends, and I think he was too proud to accept service which he had reason to believe reluctant or insincere. But Bacon, as soon as he had an opportunity of *speaking* to him, convinced him—a thing the more easily done because it was certainly true—that he had *meant* all along to serve and not to cross him: and it is quite in accordance with all we know otherwise of Buckingham's character that, being once convinced of that, he should treat as cancelled an offense which had not been committed.

The only thing, so far as I know, which may seem to countenance the suspicion that some unworthy compact of compliance was the condition of Bacon's restoration to favor, is the fact that among the very many letters which

Buckingham had to write to him on matters of public business—for it was through the Favorite that the King commonly corresponded with the Lord Keeper—there are some written on his own account in favor of parties having suits in Chancery; and that such letters came more frequently after the reconciliation than before. Their greater frequency after the reconciliation is easily accounted for; and indeed, unless they had been discontinued altogether, it could hardly have been otherwise. After the reconciliation was after the return of the Court to England. During the few months that Bacon had held the seals when the misunderstanding arose, Buckingham, being away in Scotland, had been comparatively free from the importunity of suitors. When he was in London, or at any of the ordinary resorts of the Court, everybody who had a suit in Chancery and access in person or through a friend to his ear would be urgent for a letter of recommendation; and Buckingham, who though touchy and resentful was affable and good-natured,—

“Lofty and sour to those who loved him not,  
But to those men that sought him sweet as summer,”—

would naturally (being also very young and inexperienced) take the course which gave least trouble to himself and most satisfaction to the suitor: he would direct his secretary to draw up a letter for his signature in the usual form. The usual form was a recommendation of the cause to the Lord Keeper so far as might stand with justice and equity, or words to that effect. But the words are of no importance, as they might be meant to pass for words and nothing more. The material question is, whether those letters were in fact meant by Buckingham or allowed by Bacon to interfere in any way with the course of justice. I do not think that any reason can be given for thinking that they were. Lord Campbell indeed in the earlier editions of his life of Bacon supplied a circumstance which, if correct, might have been

thought to tend that way. He discovered a change in the character of these letters. "*At first*," he said, Buckingham "used the qualification 'so far as may stand with justice and equity' . . . but he *afterwards* omitted these decent forms and pretty plainly intimated that he was to dictate the decree." Being reminded, however, that the dates did not bear out this observation, that the change was really in the opposite direction, the omission of the qualifying clause being *less* frequent "*afterwards*" than "*at first*;" for that among Buckingham's letters of this nature those which contained *no* qualifying clause were in the first year as three to four; in the second, as three to eight; while in the third, fourth, and fifth they disappeared entirely; he was induced at last to give up the circumstance of time, which he had introduced by way of support to the imputation which followed; leaving the imputation to stand by itself unsupported.

That these letters passed without remonstrance — that is, that no record of any remonstrance has come down to us, does not appear to me to justify the inference which Lord Campbell seems to have drawn from the fact. Assuming, in defiance of all probability, that they were "paid for" by the parties, he concludes that in the absence of any record of remonstrance "*Buckingham and those who paid for them* must have believed that they were effectual." If the real object of these letters was, as I suppose it was, not to influence Bacon's judgment but to satisfy the friends who asked for them, and if Bacon understood them so, remonstrance was not called for on the ground of any real interference with justice; and any remonstrance that he might think it expedient to make on the ground that the practice was a bad one, could be much better and more effectually made in personal conference than by letter; in which case no record would remain. For my own part, therefore, before I believe either that Buckingham desired or that Bacon allowed

him to "dictate decrees," I must have some better reason for suspecting it. No such charge was made against him while he lived and could have answered it, either before his fall, or after; and though death did not in his case "open the gate to good fame and extinguish envy," no writer of his own or the next generation accused him of deciding causes unjustly out of deference to Buckingham. Until these letters, which appear to have been carefully filed and docketed, were found among his papers and published in 1763, no one knew that Buckingham ever interfered at all in such matters; and though they are all included in every edition of Bacon's works that has appeared since, no attempt was ever made to connect any of them with an *unjust decree*, till within the last few years, when I myself raised the question with regard to the only one among them, on the face of which I saw some reason for suspecting that the decree had been influenced by the letter. The history of the inquiry which followed would make too long a story for the present work; but as it bears upon the gravest of all the imputations that have been cast on Bacon's judicial character, it is necessary to state the result; and though the case in question belongs to a somewhat later time, it will be convenient to state it here.

A careful investigation of the records of this case has shown that in a dispute between an uncle and a nephew about a legacy, Bacon did allow a question which he had decided to be reopened and referred to arbitration; that this was against the rules of the Court as laid down by himself; and that it was done in consequence of Buckingham's interposition on behalf of one of the parties. How much danger to justice may have been involved in such an irregularity of procedure is a question which I must leave to lawyers: but with regard to the immediate result, as affecting the interest of the parties in the particular case, we are still left in ignorance of several

things, which we must know before we can judge. We cannot judge whether the final decision was just or unjust: for we do not know what it was; or whether either party complained of it, or was dissatisfied with it; or whether the reference of the dispute to arbitration was not made with the consent of both, or indeed whether it was not for the benefit of both. It is true that if a Chancellor's authority in those days had been above control, and his decrees had not been subject to appeal, the party who had already obtained a decree in his favor was not likely to *consent* to have the question reopened. But I apprehend that the Lord Chancellor's decree was not necessarily the end of the business. The cause of the winning party was still subject to possibilities beyond Bacon's control, the apprehension of which might have made the so far victorious suitor think it prudent to acquiesce in the proposed arrangement. According to Lord Chief Justice Hale, there were then two ways of reversing a decree in Chancery; "either by petition to the King, and thereupon a commission to examine the decree and proceedings, whereof there were some precedents, or else to set it aside by act of Parliament." Now if either of these courses was *threatened* in this case, with Buckingham to back it and the King to back Buckingham, I can believe that an agreement to refer the question at issue to "five, four, or three indifferent persons of reputation," and abide by their decision, was a judicious compromise: and also that if, without troubling a formal commission to examine and report, the uncle and nephew agreed to settle it between themselves, and waste no more money in litigation (which may be the true reason why there is "no trace of anything done under the order"), it was better still — for *them*.

Further search among the Chancery records by those who are competent to deal with the technicalities may alter the aspect of the case. But as it stands at present,

this being the only instance we know of in which Buckingham's interference induced an alteration in Bacon's proceedings as a judge, and these being the probable conditions of it, the question is whether it is enough to prove that Bacon "suffered Buckingham to dictate many of his decrees." I think not. I take it to be quite possible that if he had been called on to answer the charge, he could have shown that to have acted otherwise would have caused in all probability a worse miscarriage of justice than the deputation of his own authority to a commission of arbitrators chosen by the parties.

In Bacon's "Proposition touching the compiling and amendment of the laws of England," referred to above (p. 172), he recommended among other things the appointment of "some grave and sound lawyers, to be reporters of law cases for the time to come." A note inserted afterwards in the margin of his manuscript informs us that he "obtained this of the King after he was Chancellor;" alluding no doubt to the ordinance for constituting law reporters, which was issued on the 24th of October, 1617, and may be seen in Rymer, vol. xvii., p. 27. It seems from that marginal note that he regarded it as an important point gained and a fact accomplished. The compilation of "a perfect course of law, or Year-books, from Edward the First to this day" — the day on which he was writing — was a work which had still to be done. He had shown how it should be done and urged the necessity of doing it; but as far as the past years were concerned, it remained (as it still remains) a thing to be wished for. For the future, however, he thought it was done indeed. "The course" (that is, the Year-books for the time past) "being thus compiled," — he had said in his "Proposition," two years before, — "then it resteth but for your Majesty to appoint some grave and sound lawyers, with some honorable stipend, to be Reporters for



the time to come, and then this is settled for all times." Reporters had now been appointed accordingly, and since that which they had to do was no way dependent upon the other being done first, he pleased himself with the belief that a real and effectual provision had been made to keep the law in order for the future, in so far as it depended upon the decisions of the Judges.

It seems, however, that something was wanted still; this measure like the rest came to nothing, and serves only for one illustration more of the fallibility of the most sagacious judgments, when they aspire to provide for the wants and govern the proceedings of another generation. That the scheme itself was both judicious and workable, and that if it had been properly followed out for the last 250 years it would have made the problem of law-reform a much easier one for this generation than it is, I find it impossible to doubt. The defect must have been in what Bacon would have called the *instrumenta animata*. The very object of an improved system of reporting was to diminish the uncertainty of the law. Now uncertainty means delay, expense, and litigation. But delay, expense, and litigation are the very things by which, though the people suffer, the lawyers thrive; and as the Reporters were of necessity lawyers, subject to the authority and supervision of other lawyers, — whose power as interpreters of the law was the more absolute the more doubtful the law was which they had to interpret, — it is not surprising that a duty involving trouble was not performed with zeal. Mr. Foss ascribes the failure to an oversight in the ordinance itself, which I cannot, however, consider a defect. According to him, the institution came to nothing because it was not made a monopoly. "As it did not contain," he says, "a prohibition against other persons, it soon became a dead letter."<sup>1</sup> If so, its death is not to be regretted: for such a prohi-

<sup>1</sup> *Lives of the Judges*, vol. vi., p. 48.

bition would have been quite unjustifiable. If the appointment of official reporters could be of no use unless all other persons were forbidden to report, it would certainly have been better not to appoint any. But why should we think so? If the Judges had cared to have their resolutions correctly and judiciously reported, and the reports duly authenticated, they could undoubtedly have secured for the official reports a substantial value which would have put competition out of the question: and if the persons appointed to the office were competent, and were countenanced, provided for, conferred with, and overlooked by the Judges, according to the intention of the ordinance, their reports must have had such a value. When the question was what had been laid down for law in a given case, they would have been the only evidence. The cause of the failure I am afraid lay deeper. Its success depended upon the coöperation of those who did not wish it to succeed. The law cannot be made simpler, cheaper, speedier, surer, and more generally intelligible, without the help and consent of the lawyers; and it is the interest of the lawyers that the law should be intricate, costly, slow, uncertain, and intelligible to none but themselves. All the work is paid for by others, and the more uncertainty the more work.

It is true that among the barristers to whom the chances of the profession give leisure, and the favor of law-publishers gives opportunity, to do the work of reporters, there are some who are more learned than some of the Judges; and it is even said that among the volumes of reports which stand highest in reputation for the soundness of the decisions which they record, there are some which were manufactured out of the proceedings of Judges who were famous for the contrary. But it is needless to say that this is not a mode of correcting the deficiencies of the law which Bacon would have thought satisfactory. Indeed, the fact makes so good a piece of

satire upon the way this part of the business is managed, that one might take it for a joke ; but I have heard it stated as a truth. Under Bacon's system there need have been no difficulty in calling in the care and learning of the Reporters to discover and correct the errors of the Bench, but it would have been done on due deliberation and with the sanction of the whole body.

On the 27th of October Secretary Winwood died, after a week's illness ; leaving an important office vacant, but less disturbance otherwise than might have been expected from the sudden removal of a man so active and busy, the head of the popular court faction, and at the same time "in his highest favor with the King, Queen, Prince, and principal favorite." His death makes a considerable figure in the news letters of the day, but none at all in this correspondence. The principal event which followed, though I do not know that it really had anything to do with it, was the restoration to liberty of Lady Hatton, who (according to Chamberlain) laid all the fault of her late troubles upon him. She was set free on the 2d of November, and a week after gave a great dinner to the King and Prince, which seems to have been the celebration of her reconciliation with everybody — except her husband. As we do not often hear of Bacon assisting at festivities of this kind,<sup>1</sup> a contemporary notice of it may be worth inserting.

"This day was the great feast at Hatton House made to the King and Prince and their followers, lords and ladies, by the most noble lady my La. Eliz. Hatton. My Lo. Coke only was absent, who in all vulgar opinions was there expected. His Majesty was never merrier nor more satisfied, who had not patience to sit a quarter of an hour without drinking the health of my La. Eliz. Hatton, which was pledged first by my Lo. Keeper and my Lord Marquis Hamilton, and then by all the

<sup>1</sup> He had been feasted, together with the Judges, by the college of Westminster three days before ; when his munificence to the King's scholars is noted by Camden.

lords and ladies with great gravity and respect, and then by all the gallants in the next room."

No successor was appointed for the present to Winwood. "The King said he was never so well served as when he was his own secretary, and to that end" (says Chamberlain) "had delivered the seals that were belonging to Sir Ralph Winwood to the custody of the Earl of Buckingham, and there perhaps they shall remain till they both grow weary of the trouble."

The correspondence with Bacon went on in the mean time much as before — only that Sir Lionel Cranfield begins now to appear on the scene as an indispensable man, who must be waited for if he is not ready. He was the same person whose proposition for the arrangement of the dispute about "Impositions" two or three years before had been noticed by Bacon with approval, as more statesman-like than he should have expected from a man of his breeding. He had been bred apprentice to a merchant in the city, and having married his master's daughter had risen to be a merchant himself; and being apt and able in his own vocation was very well qualified to assist in the principal business upon which the Council was now engaged — the retrenchment of needless expenditure in the King's household and the rectification of his finances. Bacon's correspondence for the rest of the year relates chiefly to their labors in this matter; but turns for the most part upon details which have no interest for modern readers.

The new year brought some changes, but chiefly in titles and dignities. A rumor that Buckingham "meant to resign the mastership of the Horse to the Marquis of Hamilton, and was to compound with the Lord Admiral for his place," had been current a month or two before; and it may be true that the King had some project of the kind. It seems, however, that Buckingham himself was

not a party to it. For we learn from another of Carleton's correspondents, writing on the 7th of January, that it was then said "he had absolutely refused to be Admiral, in respect of the King's service, — not being experienced in that office." Upon which the King "in requital" made him a Marquis. The patent was a New-Year's gift, and bestowed apparently without any ceremony.

On the Sunday after New-Year's day, the new Marquis made a great feast, at which among other things the Lord Keeper was made Lord Chancellor: "wherein," says Chamberlain, "besides the title he hath this advantage, that it is for life, with £600 a year increase." Nor was this the only favor bestowed upon him at this time. "The speech goes," adds the same authority, "that he shall be made a Baron, and hath the making of another given him to discharge his debts; which in courtesy he hath offered to his eldest brother for £1,000 less than another should give: which he will not accept; mindful perhaps of his father's motto or posy, *mediocria firma*. His Lordship hath of late much insinuated into the King's and Lord Marquis's favor; and takes a new course of thriving; having at one clap cashiered sixteen of his gallants."

This last circumstance will be found hereafter to be of some importance in connection with the *date* of the offenses for which he was impeached. It seems to indicate a serious effort to set his house in better order, at a time when his fortune was otherwise very prosperous and nothing seemed to threaten a reverse. Nor was it made altogether in vain, if it be true, as I believe it is, that none of the acts laid to his charge were then of recent date. But this belongs to a future chapter. Perhaps it was only his present occupation in the retrenchment of expenses in the King's household that reminded him of the expediency of doing the same in his own, which

wanted it almost as much. Such New-Year's gift as a pair of golden candlesticks for the Prince, or a cup of essay for the Marquis, were not extravagant. But if forty pounds' worth of plate as a New-Year's gift to the Archbishop of Spalato<sup>1</sup> was not an exceptional case, — if it was a fair sample of the style in which he did these things, — the disappearance of an ample income without clearing his estate from debt needs no curious explanation.

On the 12th of July, 1618, Bacon was created Baron Verulam of Verulam. Whether this justifies us in styling him "Baron of Verulam" (as has been commonly done for the last two hundred years wherever his titles are enumerated) is a disputable question, but not one in which his own reputation is interested. He never used that addition himself, but styled himself, if writing English, "Francis Lord Verulam;" if writing Latin, "Franciscus de Verulamio:" and it was doubtless as Verulam, or Lord Verulam, that he expected the next ages to know him and speak of him. I think everybody who has been concerned with him as editor or biographer must agree with me in regretting that the next ages did not take the hint. Being invited to call him by a name as handsome in sound and associations as any that England could have furnished, they have fixed upon him one of the ugliest and most vulgar; a name associated chiefly with the poorest kind of joke (and quite as much so since he bore it as before), and so commonplace, that in order to make it serve the purpose of distinguishing him from the rest of his surname at all, they have been obliged to invest it with a title to which it never had any pretense. An attempt has indeed been made of late to justify the title of "*Lord* Bacon" by the analogy of "*Lord* Coke,"

<sup>1</sup> "I hear the King gave him a new-year's gift of plate to the value of £100, and the Lord Chancellor gave him one of £40." Chamberlain to Carleton, 17 Jan., 1617-18.

“Lord Hale,” and others. And it is true that *chief justices* retained in popular speech the prefix of “Lord,” though never made Peers. But this practice did not extend to the Judges in Chancery. Sir Thomas More was Lord Chancellor More, but was never called Lord More. Sir Nicholas Bacon was Lord Keeper Bacon, but was never called Lord Bacon. And so through all the list of Lord Keepers, Lord Chancellors, and Masters of the Rolls. Francis Bacon is the only one who even in popular speech ever bore the prefix of “Lord,” otherwise than in conjunction with the title under which he was called to the Upper House. How his case came to be an exception, it is not difficult to divine. While he was only Sir Francis Bacon, he had acquired a popular reputation under that name. As long as he was Lord Verulam, he was also Lord Chancellor, and was so spoken of. When he ceased to be Lord Chancellor, he ceased to be before the public, and was scarcely spoken of at all. Hence it happened that people never became familiar with either of his proper titles of nobility. When Lord Verulam or Lord St. Albans was spoken of, it was necessary to explain that the person meant was Sir Francis Bacon; and thus the surname, which he had himself meant to part with forever, had to reappear upon the title-pages of his works. And when in the course of time other candidates arose for both his other names, — when “Lord St. Albans” was a De Burgh or a Jermyn, and “Lord Verulam” a Grimston, — the patronymic, already popular, became indispensable. As a man, he must be Bacon; as a Peer, he must be Lord: and the two together make “Lord Bacon.” And so, I fear, it must remain. To correct the name by which a famous man is popularly known is a vain ambition, and I can do no more than abstain in my own person from committing or sanctioning the barbarism. The surname, though a continual annoyance, I am obliged continually to use: but the false title may be dispensed with, if people are so disposed.

The next letter introduces a subject to which it is rather strange that Bacon's correspondence has not hitherto contained a single allusion. For it was a matter of great moment ; much disputed in council ; full of doubts and perils of the most serious kind : and followed for the last eighteen months with eager popular interest, — a subject which he must have been watching from the beginning with the gravest anxiety.

We left Sir Walter Raleigh fifteen years ago in the Tower, under sentence for treason ; respited, but not pardoned.<sup>1</sup> The conditions of his captivity were not, however, very severe. They had not deprived him of his powers, nor altogether of his sphere, of action. Besides his "History of the World," which might be thought enough by itself to account for all his time, he had written various treatises, political and scientific ; his taste for experiments in chemistry had made Bacon think of him as one who might possibly be induced to lend a hand in the "Great Instauration ;" and he had at the same time kept up his communications with the New World, and his hopes of accomplishing there some great work of colonization, conquest, or commerce. Several trading or exploring voyages had been made by his means or in his interest ; and the results had enabled him to inspire others with his own belief that mines of wealth rich enough to enrich a nation were waiting there for those who had courage to find and work them. How much he knew, and how much he believed, and what kind of mines he looked for, and how he thought they were to be approached and occupied, nobody, I think, will ever find out. But one thing we may be sure he knew — that if he could persuade the King to sanction an expedition and place it under his command, he must (for the time at least) be let out of the Tower. In order to obtain so much liberty he was ready to give any security which

<sup>1</sup> See above, vol. i., p. 435.



might be proposed that he would not abuse it. With that view he had already made at least three distinct proposals: one to the Earl of Salisbury (supposed in 1607), a second to Lord Haddington (supposed in 1610), a third in 1611 to the Lords of the Council. None of these were accepted; but the last was framed with a view to get rid of *one* of the principal difficulties. According to this, he was not to go himself, and liberation was to be contingent on success. Two vessels were to be sent under the command of Captain Keymis in search of a particular gold mine, the locality and wealth of which he knew; on condition that if more than half a ton of gold were brought back from it he should have his liberty; if less, that he should remain a prisoner for life. The *personal* security would in this case probably have been thought sufficient. But there was another point upon which security was more indispensable, and in which all these proposals were equally defective. Security was required against breaches of the peace. And as one of the proposed provisions was that "the Spaniards were not to be attacked except themselves should begin the war," it appeared upon the face of the proposal that the place where the mine was to be sought was one where Spaniards were likely to be found. This, like the two former, was rejected; I suppose for this reason. It was necessary therefore to get rid of this provision: which was easily done by providing that there should be no Spaniards in the way; and a fourth proposal was made, soon after Salisbury's death, similar in other respects to the last — so similar indeed that it might have been taken for the same — but differing in two points: The mine was to be one which was not near to any Spanish settlement; and he was to conduct the expedition in person. This new proposal, being supported with the full weight of Winwood's authority, who was now Secretary of State, the King was persuaded to agree to. On the 19th of March,

1615-16, Raleigh was allowed to leave the Tower (though still with a keeper) to make preparations, and on the 26th of August, 1616, his commission was signed.

No mention was made in it of any particular mine. The enterprise was described as a voyage "unto the south parts of America or elsewhere within America, possessed and inhabited by heathen and savage people; to the end to discover and find out some commodities and merchandises in those countries that be necessary and profitable for the subjects of these our kingdoms and dominions, whereof the inhabitants there make little or no use or estimation; whereupon also may ensue by trade and commerce some propagation of the Christian faith and reformed religion amongst those savage and idolatrous people." But though the design was not more exactly defined (probably because a definition of the *place* where the treasure was might have incited rivals to contend for it), it was well understood that the real object, or at least the real pretense, of the voyage was a particular gold mine, of the existence of which near the banks of the Orinoco, Raleigh had certain knowledge, and of the ore of which he had seen and tested samples. The commission gave him all the powers necessary for a commander, and secured to him and his fellow-adventurers full property in all they should bring home, with a reservation of a fifth part for the Crown. By way of security against failure of performance or abuse of commission, the tenure under which he held his life was thought enough; and when Gondomar objected to the voyage on the ground that the mine was a mere pretense, that Raleigh's real intention was some piratical attack on Spanish property on land or sea, for which the force he was to be trusted with — fourteen armed ships carrying a body of land soldiers — would give him ample means; answer was made that he durst not attempt anything of that kind, because it would be at the peril of his life. "That there might be no

mistake," says Mr. Gardiner, "he was called on to give security that he would not hurt any subjects of the King of Spain, and was plainly given to understand that if these orders were transgressed he would pay the penalty with his head:" and though the authority which is given for this statement does not imply that the warning had been given to Raleigh himself, but only that Winwood had declared it to be the King's known and avowed intention, it can hardly be doubted that Raleigh understood the condition well enough; nor is there any reason to think that he would have shrunk from accepting it. We have seen what security he was himself ready to offer for the performance of his engagements, in case he were allowed to go in person. If he did but *persuade* a course contrary to his avowed design, the officers in charge were to "cast him into the sea." If he did not bring them to a mountain covered with gold and silver ore, they might "cut off his head." It is evident therefore that he was quite prepared to run any risk of that kind: any risk, I mean, which was involved in *accepting* the condition and making the *engagement*. It does not follow that he meant the penalty to be paid: and having so many ways of escaping beyond the King's reach, I dare say he thought it very unlikely that the day would ever come when it could be demanded. But it is important to know and to remember that this was really the understanding upon which he undertook the enterprise. His commission was large enough. It did not limit him to one gold mine; nor did it require him to bring back gold at all. If he did really know of such a mine as he said he knew of, in a land not occupied *de facto* by Spaniards, there would be nothing to prevent him from bringing back enough of the produce to establish the fact; and it would be for the government to decide whether a permanent occupation should be attempted. But it at the same time left open to him the whole field of peaceful enterprise. Anything

which the natives were willing to part with he was at liberty to bring back and take four fifths of the value. There was nothing in it to prevent him from turning his voyage to purposes of trade, discovery, colonization, or propagation of the Christian faith. The one thing which was forbidden was intrusion upon ground occupied by a civilized nation. The parts in which he was to operate were to be parts "possessed and inhabited by heathen and savage people;" a limitation carefully repeated in every clause. It has been said indeed that this limitation was futile and left everything open to dispute; for what was "possession"? how far did the rights of "occupancy" extend? And it is true that in order to answer that question satisfactorily and completely for all cases, it would have been necessary to obtain the opinion and consent of all civilized nations. It is true also that a case might easily have occurred in the execution of this very commission which would have left room for a quarrel between England and Spain. If Raleigh had found a valuable mine in some region at a distance from all Spaniards, and if the Spaniards had claimed it as their property in virtue of some distant settlement of theirs on the same coast, it would have furnished occasion for a fair diplomatic dispute, which the two nations would have had to settle as other disputes between nations are settled. In such a case the government could have had no quarrel with Raleigh. But *all* cases are not of this disputable kind. Whatever difficulty there may be in deciding whether those which lie near the limit are within or without, there are some which lie so far within that they leave no room for dispute at all. A place, for instance, which cannot be conveniently reached or safely occupied without taking military possession of a town built and inhabited by people professing Christianity, — is it or is it not a place "possessed and inhabited by heathen and savage people"? There could be no diffi-

culty in answering that question, at any rate. If Raleigh himself had been asked before he went out — and asked in a way which obliged him to give a serious answer — what he would do if when he came to the mine he found a Spanish settlement prepared to resist him, what answer could he have given? He must have said that he would endeavor to turn his voyage to some other account; to find a mine elsewhere, to explore some other coast, or trade with the natives for some other commodity. He could not have said that he would land in spite of the Spaniards; for that was the very thing which the terms of his commission distinctly excluded. And it is possible that some such questions *were* put to him before he went. We learn incidentally from one of Bacon's apophthegms that soon after he became Lord Keeper (which would be shortly before Raleigh sailed), he had a long conversation with him in Gray's Inn walks. We are not told what the subject was, but it must have been interesting, and was probably important, for it was then that he kept the Earl of Exeter so long waiting upstairs. And it may have been on that occasion that the passage occurred which was related to Sir Thomas Wilson long after by Raleigh himself.

“Before he went, having conference with some great Lords his friends, who told him that they doubted he would be prizing if he could do it handsomely, ‘Yea,’ saith he, ‘if I can light right on the Plate fleet you will think I were mad if I should refuse it.’ To whom they answering, ‘Why then you will be a pirate;’ ‘Tush,’ quoth he, ‘my Lord, did you ever hear of any that was counted a pirate for taking millions? They are poor mychers that are called in question for piracy, that are not able to make their peace with that they get. If I can catch the fleet, I can give this man ten thousand and that man ten thousand, and 600 thousand to the King, and yet keep enough for myself and all my company.’”

This of course must be supposed to have been spoken

in jest, — a playful diversion of an inconvenient question. But the apprehension that some such alternative in case of failure did enter into his contemplation was serious, and was not confined to Bacon. It is plain that Chamberlain (whose intimacy with Winwood gives more than usual importance to his impression in this matter) had no faith in the sincerity of the enterprise. On the 29th of March, 1617, — the day on which Raleigh sailed from Dover for Plymouth, — after mentioning some obstructions interposed or apprehended, and that the Prince was no friend to the expedition, he adds, “God knows there needs no such great working to overthrow the voyage; for aught I can understand, I fear he doth but go (as children are wont to begin their tales) to seek his fortune.”

The difficulties were, however, overcome, and on the 12th of June he set sail with his squadron from Plymouth. After a tedious voyage in which he lost several of his principal officers and many of his men by sickness, and nearly died himself, he anchored in the mouth of the Caliana on the 14th of November. There he rested for a few weeks, and then assembling his fleet at the “Triangle Islands” proceeded to “embark his men in five ships for Orenoque: to wit, 400 soldiers and sailors” — with victuals “for a month and somewhat more.” Of his preparations and instructions for this expedition we have his own account, written after his return to England, but before he knew on which side he would be called on to defend himself, — a circumstance which does not diminish its value. From these we learn the nature of the enterprise as he understood it when he reached the scene of action. It was easy when in England to say that there were no Spaniards anywhere near the mine; but before he ventured on a landing it was necessary to ascertain the fact. Accordingly, his first inquiry seems to have been as to the forces of the Spaniards on the Ori-

noco. The answer he received was that a great number of soldiers had been sent thither, and the first instruction he gave to the companies who were to go was "to stay a day or two in the Shurinamo to get pilots," etc., and "by the Indians of that place to understand the state of the Spaniards in Orienoque, and whether they had replanted or strengthened themselves upon the entrance or elsewhere."

It is clear therefore upon his own showing that, if not at the mine, at least on the way to it, he apprehended encounters with Spaniards. But this might be only at the mouth of the river or on the coast. His care might be only to pass these by, on his way to a region where there were none but savages. And the plan which was *first* proposed seems to be in accordance with this view of the case. For the expedition consisting of six companies in five ships, Keymis, who was to be commander, proposed to go forward himself in a shallop with only one officer and six musketeers, and pass at once to the mine, leaving the rest below. But this, though the first, was not the *final* resolution. Whether it was given out at first only for appearance, or whether it was a design really intended by Keymis, which he would have been rash enough to execute, Raleigh took good care to countermand it before it was too late. After the enterprise had been resolved upon and the instructions given, he "better bethinking himself and misliking Keymis's determination, gave him this order following."

"Whereas you were resolved, etc., I do not allow of that course, because you cannot land so secretly but that some of the Indians from the river's side may discover you, who giving knowledge of your passage to the *Spaniards*, you may be cut off before you recover your boats."

So there were Spaniards to be expected in the immediate neighborhood of the mine, as well as along the river. Nay, there was *perhaps* a Spanish town. For he goes on:—

"I do therefore advise you to suffer the captains and companies of the English to pass up to the westward of the mountains,<sup>1</sup> from whence you have less than three miles to the mine, and to lodge and encamp between *the Spanish Town* and you, if there be any Town near it; that being so secured, you might make trial what depth and breadth the mine holds, and whether it answereth our hopes."

And what if the Spaniard should interfere with the operation?

"If you find it royal, *and that the Spaniard begins to war upon you*, then let the Sergeant Major repel them if it be in his power, and drive them as far off as he can. But if you find not the mine to be so rich as may persuade the holding of it, and to draw on a second supply, then shall you bring but a basket or two," etc.

These extracts are from Raleigh's own instructions to Keymis *before* the voyage up the river had begun, as reported by himself. Can anybody maintain in the face of them that he *thought* he was sending his men to a place "possessed and inhabited by heathen and savage people," where there was no danger of hurting a Spaniard? If it be said that he did not think so *now*, because he had obtained fresh information since he arrived, but he did think so when he left England, and it was now too late to alter his course; for if the mine he had come for proved to be in a country possessed and inhabited by Spaniards,

<sup>1</sup> So in my copy. (*Abridgment of Sir Walter Raleigh's History of the World. Also some genuine remains of that learned knight — published by Philip Raleigh, Esq., only grandson to Sir Walter.* 3d edition, 1702.) Other copies read "to the westward of the mountain of Aio."

From this and some other passages Mr. Gardiner justly infers that Raleigh supposed the town to be higher up the stream than the mine. How he arrives at the conclusion that he supposed it to be *as far up* as the mouth of the Coroni I do not know. The question is not, however, of importance; for wherever he believed the town to be it is clear that he believed the mine to be not far off. So that even if he did not know of the change of site, it makes no difference. But the fact seems to be that he supposed the mine to be many leagues below the mouth of the Coroni, and supposed also that a town had been set up within three or four miles of it; only he supposed the town to be above, — not below, as it turned out.



what was he to do? The answer may be given in his own words : —

“ On the other side, if you find that any great number of soldiers be sent into Orienoque, *as the Cassique of Calliana told us that there were*, and that the passages be fenced, so that without the manifest peril of my son, yourself, and the other captains, you cannot pass towards the mine, then *be well advised how you land* ; for I know (a few gentlemen excepted) what a scum of men you have, and I would not for all the world receive a blow from the Spaniards to the dishonor of our nation.”

If he found, contrary to his expectation, that the approaches to the mine were so possessed and inhabited by Spaniards that it could not be reached without manifest peril of a collision, then it behoved him *to be wary how he allowed it to be attempted*. That which might be done rather than *receive* a blow *from* the Spaniards to the dishonor of England, might be done rather than *inflict* a blow *on* the Spaniards to the dishonor of England.

To me it seems that these instructions in themselves make the case as against Raleigh complete, without even inquiring what the result of the enterprise was. They constitute in themselves a transgression of his commission and a violation of his pledge in its main feature. His commission limited him to places possessed and inhabited by heathen and savage people ; he sent his men to a place which he knew to be possessed and inhabited by Spaniards. He pledged himself not to hurt any subject of the King of Spain ; he sent his men up the river with instructions to fight any Spanish force which they could be sure of defeating.

That he should have been in such a hurry to produce this evidence against himself — for the “ Apology ” which contains it was written (and I believe pressed upon the King’s notice) during his journey to London, before any charge had been made against him, and when all he knew was that he was to be called in question — can only be

explained, I think, by supposing that he mistook the nature of the charge which he had to answer. He seems to have thought that the offense of which he was to be accused was only his failure to find the mine and bring back gold; and the object of the "Apology" was to show that, though he had failed in this, he had done his best to succeed; that the mine was there, and many other mines, well known, easy to find, and unworked; that the failure was entirely due to Keymis, who was dead; that as the whole country, in virtue of a cession from the Guianians to Queen Elizabeth, belonged to the King of England, any Spaniards who might be there were usurpers, whose towns it was no breach of the peace to take and burn: that "if we had had any peace with the Spaniards in those parts of the world," they had themselves broken it long before; and that if in this case there were any complaint of aggression, it should come, not from them, but from him, — "who landing his men in territory appertaining to the King of England, they were invaded and slain before any violence was offered to any of the Spaniards."

Now that the offer of an Indian King to resign his country to the Queen of England, on condition of being protected against the Spaniards, — an offer made to Raleigh twenty years before, but never accepted or followed up except by occasional messages from himself "to keep them in hopes of being relieved," — that the tradition of such an offer would have justified her successors in treating all Spanish settlers as enemies who might at pleasure be burned out of house and home without proclamation, notice, or parley, — and in authorizing any of his subjects to perform the operation for him, — I dare say Raleigh really believed. As a question between the two governments, he may have thought that James had a right to consider himself as in possession, and to act accordingly. But he was a statesman as well as a soldier and sailor;

and he cannot have believed that where the sovereignty of a territory has not been publicly accepted, assumed, and proclaimed, it is lawful for a *subject* to take the matter into his own hands, and *without* authority from the government to invade at discretion, kill all opposers, and call it self-defense. I cannot think therefore that to justify himself against *this* charge was the real object of his "Apology." Its inadequacy is too glaring. It was designed, I think, to meet a supposed accusation of a different kind. He fancied that his real offense, in the King's eyes, was not the burning of the town, but the missing of the mine. He thought that if he had brought the gold the King would not have quarrelled with him about the means employed to get it; and it was to his supposed cupidity, not to his sense of justice, that the argument was really addressed. The reasoning which so entirely fails to justify his own transgression, as against the King, is more to the purpose when applied to justify the King as against Spain in seeking the same end by similar means. Raleigh wished to make him understand, before he committed himself to any public action in the matter, what treasures lay within his reach, how lawfully he might take them, and (if he would but grant the necessary authority) how easily. As an encouragement to him to embrace the enterprise on his own account instead of punishing it, and to make it a ground of quarrel with Spain instead of acknowledging it as an injury requiring redress, it was a skillful composition. But it was built upon a mistake; a mistake as to the King's character, which Raleigh had not had good opportunities of studying. For my own part I do not believe that any quantity of gold would have reconciled James to the destruction of that town under those circumstances. He had a high respect for a King's promise, and he had pledged his word to a brother King that no such thing should happen. He had a sense of natural justice, and could see (what does

not seem to have occurred to Raleigh) that the destruction of a town full of people who had individually committed no offense was against natural justice. He had carefully considered the terms of the commission, with a view to provide against the possibility of its being abused in this very way; and the provisions had been set at nought. These were the acts which required apology. The failure of the search for the mine was only the misfortune of the adventurers, and of small concern to the King, who had built no extravagant hopes upon it. For these acts, however, Raleigh unfortunately had no valid apology to offer. Had he been able to say that the search failed because, finding when he arrived at the place that there was a Spanish settlement in the neighborhood, he could not pursue it without transgressing his commission and breaking his pledge, he would perhaps have forfeited his popularity, but he would certainly have kept his head. No fault would have been found with him by the King. Spain would have had nothing to complain of. But this he could not do. Before his men reached the supposed place of the mine they came upon a Spanish town or village. The soldiers landed; found themselves in the neighborhood of an armed force; attacked or were attacked (for accounts differ as to the first blow<sup>1</sup>); drove the Spaniards back upon the town; which was so close by, that "they were ready to enter it ere they knew where they were;" slew the captains; and being shot at from the houses, set fire to the next buildings and so drove the defenders out. The town being thus occupied, a search, real or pretended (for here also accounts differ), was made for the mine; which Keymis, the only man who knew anything about it, declared to be within eight miles; but the Spaniards were in the woods, and so far in *de facto* possession of the country that it was fatal to advance. And so after a few weeks of fruitless work they gave it up; carried away

<sup>1</sup> None of the accounts mention any attempt at a parley.

whatever they could find in the town worth taking; set fire to the buildings which they had not burned down before; and returned as fast as they could to the fleet; which after some abortive projects for redeeming their fortune in some other action, came back to England without doing anything more.

It was on the 13th of May, 1618, that the King heard from Captain North what had happened. How the story was told to him we do not exactly know; but as Captain North had been with the river party all the way, the essential facts — the landing close to a Spanish settlement, the fight, the occupation, pillage, and burning of a Spanish town; and the cause of their retreat, namely, that they could not dislodge the Spaniards from the woods — cannot have been disguised. The solemn assurances which the King had given that Spain had nothing to fear from the expedition had been shamefully falsified. There could be no doubt of that. By whom it was done, and on what pretense, was yet doubtful. But the word of England had been broken; and there is no need to bring Gondomar on the scene with his “*Piratas, Piratas, Piratas,*” to account for what followed. If a commission under the great seal meant anything, it meant that the powers which it conferred were to be used within the limits which it prescribed. A commission had been given to certain persons, authorizing them to search for commodities and merchandises in any part of America not inhabited by subjects of any Christian power. The search had been commenced in a part of America known to be inhabited by subjects of Spain; and the first act was the burning and pillage of the nearest town. The stoutest historical and literary anti-papist, as long as he can keep this fact in his mind, will hardly maintain that the case did not demand *investigation*; and if so much be admitted, it will be impossible to object to the measure which was first taken. On the 11th of June —

not so soon as to imply any very precipitate action, but as soon, probably, as Raleigh's ship was reported safe in Plymouth harbor — a proclamation came forth, "declaring his Majesty's pleasure concerning Sir Walter Raleigh and those who adventured with him." It began with a recitation of the conditions of the enterprise; then, perhaps not generally known; now, I think, seldom remembered.

"Whereas we gave license to Sir Walter Raleigh, Knt, and others our subjects with him to undertake a voyage to the country of Guiana, where they pretended great hopes and probabilities to make discovery of certain gold mines, for the lawful enriching themselves and these our kingdoms; wherein we did by express limitation and caution restrain and forbid them and every of them from attempting any act of hostility, wrong, or violence whatsoever upon any of the territories, states, or subjects of any foreign princes with whom we are in amity, and more peculiarly of those of our dear brother the King of Spain, in respect of his dominions and interests in the continent:

"All which notwithstanding, we are since informed by a common fame that they or some of them have by an hostile invasion of the town of St. Thome, being under the obedience of our said dear brother the King of Spain, and by killing of divers of the inhabitants thereof his subjects, and after by sacking and burning of the said town, as much as in them for their own part lay, maliciously broken and infringed the peace and amity which hath been so happily established and so long inviolably continued between us and the subjects of both our crowns;

"We have therefore held it fit, as appertaining nearly to our royal justice and honor, eftsoons to make a public declaration of our own utter dislike and detestation of the said insolencies and excesses (if any such have been by any of our subjects committed), and for the better detection and clearing of the very truth of the said common fame, we do hereby straitly charge and require all our subjects whatsoever that have any particular understanding and notice thereof, upon their duty and allegiance which they owe us, immediately after publication of this our pleasure to repair unto some of our Privy Council and to dis-

cover and make known unto them their whole knowledge and understanding concerning the same, under pain of our high displeasure and indignation, that we may thereupon proceed in our princely justice to the exemplary punishment and coercion of all such as shall be convicted of so scandalous and enormous outrages."

A manuscript copy of this Proclamation in the Record Office is dated 9th of June. But the date given by Rymer, which I suppose to be that of publication, is the 11th; a date coinciding so nearly with the news of Raleigh's arrival in England, as to suggest a connection between the two. The exact day indeed when the *Destiny* anchored in Plymouth harbor does not seem to be known. But we know that she had been arrested by order of the Vice-Admiral of Devon *before* he received orders from the Lord High Admiral to apprehend Raleigh himself, which was on the 12th of June; and I suppose it had been thought prudent to keep the proclamation back till his arrival, lest it should supply him with an additional motive for seeking a foreign port. What effect it had upon him when he first heard of it, we are not informed. Our information, such as it is, comes from Captain King, as quoted by Oldys. But if Captain King's story and Sir Lewis Stucley's dates are both correct, he can have lost no time in leaving Plymouth. For Stucley, going it seems in haste, for he had at first only a verbal commission, — setting out the day after the date of the Proclamation, and travelling probably about as fast, — met him (according to Captain King) at Ashburton: twelve miles to the northeast of Plymouth: on his way — whither? Perhaps to London, to report himself. That no doubt would have been the right thing for him to do. Perhaps to some other port. Who can say? The question does not seem to have been asked. Stucley told him what his orders were, but though he had come in haste he appeared to be in no hurry: and having to look after the

*Destiny* and her contents (for an account of which to the Crown he was, I suppose, by his office responsible), he began by taking Raleigh back with him to Plymouth. Raleigh, we must suppose, seemed quite willing to attend him; for very little constraint was put upon him for several days. But the arrest was a warning that he would be called upon to answer for his part in the conduct of the enterprise; and whatever may have been his intention in going to Ashburton, there is no doubt that from the time when he returned to Plymouth he meant to escape out of England if he could. I need not describe here the measures which he took for this purpose. It will be enough for the present to say that he had remained for above a month at Plymouth in Stucley's custody, who was busy about other things; when at last, upon a peremptory message from the Council, dated 25 July, requiring that he should be brought without further delay, he began his journey to London: that he arrived at Salisbury on the 27th: that while there he contrived to make himself look so ill, that Sir John Digby (who was with the Court, which arrived at Salisbury in "progress" on the 1st of August) obtained leave for him to go to his own house for a few days on his arrival in London: that he used the opportunity for another attempt to escape; but being detected, outwitted, and intercepted by Stucley (whose connivance and help he had endeavored to secure by a bribe), was on the 9th of August lodged in the Tower: and that it was during this journey from Plymouth that he wrote his "Apology."

The Councillors appointed to examine and report upon the case were Abbot, Bacon, Worcester, Cæsar, Naunton, and Coke. Bacon came up from Gorhambury on the 17th of August; on which day the first of many meetings was held. But the history of their proceedings (of which our knowledge is at best imperfect and fragmentary) has had great darkness thrown upon it by an un-



lucky oversight in a work generally of high authority. In the "Camden Miscellany" for 1864 a paper appears with this heading: "Proceedings of the Privy Council against Sir Walter Raleigh: Aug. 17, 1618." It is a note of Sir Julius Cæsar's, to which attention was first drawn, I believe, by Mr. Jardine, in the "Library of Entertaining Knowledge," and well worth publishing. But it belongs to a much later date, — nine weeks later, at least. It is true that at the top of one of the columns of the manuscript — not the *first* column, however, but the last, — the date "17 Aug., 1618" had been written; and below it the words "Sr Walter Raleigh, Kn<sup>t</sup>." But the transcriber failed to observe that both date and words had been afterwards carefully crossed out, and were evidently meant for another occasion. Sir Julius had no doubt prepared the sheet for the meeting of 17 August (the business of which was the examination of Raleigh, not the proceedings against him); but he had not used it. Another day, finding this paper blank (all but the heading) he turned the unwritten side uppermost, and filled column after column with his notes, till he came to what was now the last; where encountering the old heading, he simply crossed it out and wrote on. It is plainly no part of the paper in question, and can only be admitted as evidence in confirmation of what we know otherwise — that on the 17th of August the case of Sir Walter Raleigh, and probably Sir Walter himself, was to come before the Commissioners.

Of their further proceedings we have no formal record: but all the incidental notices which have come down to us seem to show that they went about their work in the regular way. The first thing was to hear what Raleigh himself had to say. The points on which he was to be questioned were set out in articles drawn up either by the King or under his direction or with his concurrence, and the Commissioners repaired to the Tower from time

to time to examine him. We learn by a letter from one of Carleton's correspondents that on the 4th of September he was examined for the third time "upon articles sent from the King. Each of these examinations would no doubt suggest questions to be put to other witnesses; and as there were reasons for suspecting him of many under-hand practices, which the King thought it important to unravel, as bearing upon the loyalty both of servants and allies, it is not surprising that the investigation lasted long. Besides the formal examinations taken by the Commissioners, of which a few have fortunately been preserved,<sup>1</sup> — though I think only by collectors for the sake of the signatures; for I do not find that their historical importance has been perceived by any of those who have seen them — an endeavor was made to come at the truth any way. A keeper was appointed to attend Raleigh in the Tower with instructions to observe all that he said and did, and acquaint the Commissioners with anything that occurred worth reporting. Sir Thomas Wilson was appointed to this office on the 10th of September,<sup>2</sup> and

<sup>1</sup> See especially the examinations of William Herbert, Esq., Captain Roger North, and Captain John Chudleigh, taken on the 17th of September, upon these questions following; which show unmistakably what the points were which the Government thought it of most importance to ascertain, after a month's investigation. 1. Whether Sir W. Raleigh did really intend a mine, or did pretend it only to abuse the State and draw followers. 2. Whether Sir W. R. appeared to the examinee to have former knowledge that the country of Guiana where the mine was was inhabited by the Spaniards. 3. Whether the assault on the town of St. Thome was any ways directed and avowed by Sir W. R. or whether those that were sent for the discovery of the mine did not incidentally assail the same. 4. Whether the examinee knoweth that Sir W. R. had or expected any commission or aid from France, and whether he had not some intention to go into France after the dissolving of his voyage, and what should be his employment there.

<sup>2</sup> His instructions were "to keep him safe and close prisoner in the condition as he was committed, not suffering any person to have access to him or to have speech with him except in your hearing, nor any at all but such as of necessity must attend him for his diet and such ordinary occasions as close prisoners usually have, and not otherwise. And whatsoever you shall observe worthy of our advertisement to acquaint us with it from time to time as becometh you." — *S. P. Dom.*, vol. xcix., No. 7.

Of the secret history of Sir Thomas Wilson's employment as expounded by

continued in the execution of it till the 15th of October; when he was released upon his own representation (made ten days before) that there was no chance of learning anything more. The preliminary investigation being therefore now complete, the question was how to proceed.

Many points remained obscure. But those which were doubtful, and about which so much time had been spent, were of small consequence compared with those about which no doubt could be. Whether Raleigh believed in the existence of the mine which was the professed object of the voyage; whether he had negotiated with the French for assistance or for an asylum; whether he would have left the river party to their fate, if his officers had consented; whether he would have betaken himself to piracy, if his men had been willing; what devices he employed or meditated for effecting his escape; and what Mr. St. John in his life of Raleigh (vol. ii., p. 297) — a speculation worthy of a place in the Great Oyer of Poisoning — I shall only say that the book must not be judged by that specimen. Mr. St. John is at all times prone to assume that a man who differs with another intends to kill him, and when one whom he favors dies, he requires no other evidence, beyond the fact that there was a difference, to indicate and convict his murderer. And how shy he is of exhibiting the facts upon which his conclusions rest may be seen in his treatment of the Winchester trial; the entire *business* of which is despatched in about thirty lines; from which (except the general heads of the indictment) nothing whatever can be gathered or guessed as to the particulars, either of the charge or the evidence or the answer. But where he does descend to facts, and reports them upon evidence which he has personally examined, he generally does better. In this case he appears to have relied upon "a collection of documents" placed at his disposal by a distinguished literary artist, who had made it for his own purposes. (See Preface, p. ix.) If it was a collection of *copies*, it would of course have its own value, whatever use it was designed for, and Mr. St. John would be answerable for his inferences. But *were* they copies? Were they not rather notes and sketches — passages of history "collected" by the writer from what he had seen or heard of the documents? With nothing before him but the contents of the correspondence as indicated in the Calendar, a man of bold imagination that way inclined might possibly find traces in it of a secret purpose to get rid of Raleigh by assassination. But I think no strength of imagination could make any man fancy such a thing who had read the correspondence itself. Mr. St. John seems also to have adopted the style as well as the ideas of his distinguished correspondent. It is not a style which two men working independently could fall into; and though it crops up here and there in other parts of his book, it strikes me as not in his own natural manner, which (as far as *style* goes) is good.

he said about the King, — these are questions which do not much concern the main point. Whatever he would have done, he did in fact stay for the return of the river party; and he did not commit or sanction any act of piracy except the taking of the town beside the mine. For a man in his position to try to escape cannot be called a crime; and if he could not manage it without resorting to false pretenses, to visit him with severe censure on that account would be to judge him by a higher standard of morals than he ever professed or his greatest admirers ever gave him credit for. If as soon as he was safe from pursuit he had transferred himself to a French ship, leaving his squadron to the second in command to choose its course and seek its fortunes, few people would have thought the worse of him. It would have been an act of “contempt,” and justified closer restraint and greater severity in case of recapture: but no one would have called it a crime for a man in his case to deceive and outwit the King in a plot for the recovery of his own liberty, so long as the means employed were innocent towards others. But where a man may be excused for breaking a window to escape from confinement, he cannot be pardoned for committing a murder or setting a house on fire. And the act of which Raleigh stood convicted by his own admission, as well as by the uncontradicted evidence of all the witnesses, included the committing of many murders and the setting on fire of many houses; besides a distinct breach of his own faith pledged to the King, involving a breach of the faith of England, pledged to a neighbor with whom she was at peace. Englishmen seem to find a difficulty in understanding the true character of this act. Raleigh himself could see no more harm in burning a town than in carrying away a basketful of ore out of an unopened mine. If the territory did not belong of right to the King (he pleaded) what right had he to take the gold? If it did, what wrong

did he commit in burning the town? Jardine calls the charges "frivolous (p. 487), vague, and senseless" (p. 519); and in relating the fact (p. 481), though he mentions the skirmish, and that the Spaniards were driven from St. Thome, forgets to mention the burning and pillage which followed,—regarding it apparently as an immaterial circumstance. Even Mr. Gardiner, who fully acknowledges the iniquity of the whole proceeding, does not appear to consider the killing and burning as any aggravation; for he can see no difference between the guilt of the King in granting the Commission and the guilt of those who made that use of it. Yet it is quite certain that the King did not either intend or anticipate any aggression upon Spaniards: and a man cannot be thought *morally* guilty of an act which he neither meant nor fore-saw, however he might be legally answerable. It is possible, however, by a very simple device to bring the true character of the act home to any Englishman. Let him only imagine an English settlement treated in the same way upon similar pretenses by a Spaniard. He will see at once that it is a crime for which somebody should be punished, and he will probably be of opinion that the person who should be punished is the person by whose authority it was done.

Now Raleigh, though he might possibly have succeeded in transferring the responsibility to somebody else, was undoubtedly the person responsible in the first instance; for the thing was done under his instructions. "The most thou canst expect," said the King to Lord Carew, interceding in his behalf, "is that I should give him the hearing:" "and indeed a legal hearing," adds Lorkin in reporting the dialogue, "is all that Sir Walter's well-wishers desire: for then they make no doubt but he will make his case good against all accusations in this kind whatsoever." But a legal hearing in this case involved a great, and I think an unexpected, difficulty. That

Raleigh's life was by law absolutely at the King's mercy, was a fact clearly understood and well remembered. It was the security under which he was held to keep faith with the King; and it was thought that it would keep him true. But how the forfeiture was to be exacted in case he failed, was a question which does not seem to have been sufficiently considered. Though by law the sentence of death, which had been only respited, could be carried into execution whenever the King chose, to put him to death for the old offense, after thirteen years of imprisonment employed as he had employed them, was a thing not to be thought of. He could only deserve death by an entirely new crime. But supposing him to commit a new crime, and one for which death was the just penalty, how was he to be convicted of it? Sense and natural justice would answer, by the verdict of a jury after a regular trial. But law said no. The lawyers, with Sir Edward Coke at their head, all agreed that the King might legally behead him, but could not legally put him upon his trial. There was nothing to prevent the King from instituting any inquiry into the case that he desired, from taking the evidence of any number of witnesses, or from hearing the prisoner's defense upon every point, and so qualifying *himself* to say whether he was guilty or not guilty. This had already been done privately by the Commissioners; and might be done over again in public. But he could not have him indicted in due form of law, and so obtain the verdict of a jury.

Such was the case which was now referred to the Commissioners, for advice how to proceed: and the next letter contains their answer. The only copy of it that I know of is among the Gibson papers at Lambeth, from which it was printed by Birch; and being dated from York House and included among Bacon's letters in all subsequent editions, it has been generally taken for his

composition. But the manuscript, though called a copy, is in fact a draft, — a rough draft in the handwriting of Sir Edward Coke: and as it is impossible to suppose that Coke wrote it to Bacon's dictation, the inference is that the task of framing the answer to the King had been deputed to him, as the highest authority on such a question, and that the letter (though representing, of course, the result of previous conferences, and concurred in by the rest of the Commissioners) was drawn up by himself.

#### TO THE KING.

MAY IT PLEASE YOUR MOST EXCELLENT MAJESTY, — According to your commandment given unto us, we have, upon divers meetings and conferences, considered what form and manner of proceeding against Sir Walter Raleigh might best stand with your Majesty's justice and honor, if you shall be pleased that the law shall pass upon him.

And first, we are of opinion, that Sir Walter Raleigh, being attainted of high treason (which is the highest and last work of law), he cannot be drawn in question judicially for any crime or offense since committed. And therefore we humbly present two forms of proceeding to your Majesty: the one, that together with the warrant to the Lieutenant of the Tower, if your Majesty shall so please, for his execution, to publish a narrative in print of his late crimes and offenses; which (albeit your Majesty is not bound to give an account of your actions in these cases to any but only to God alone) we humbly offer to your Majesty's consideration, as well in respect of the great effluxion of time since his attainder, and of his employment by your Majesty's commission, as for that his late crimes and offenses are not yet publicly known.

The other form (whereunto, if your Majesty so please, we rather incline) is that where your Majesty is so renowned for your justice, it may have such a proceeding

as is nearest to legal proceeding; which is, that he be called before the whole body of your Council of State, and your principal Judges, in your Council Chamber; and that some of the nobility and gentlemen of quality be admitted to be present to hear the whole proceeding, as in like cases hath been used. And after the assembly of all these, that some of your Majesty's Councillors of State that are best acquainted with the case should openly declare, that this form of proceeding against Sir Walter is holden for that he is civilly dead. After this your Majesty's Counsel Learned to charge him with his acts of hostility, depredation, abuse as well of your Majesty's commission as of your subjects under his charge, impostures, attempt of escape, and other his misdemeanors.

But for that which concerns the French, wherein he was rather passive than active, and without which the charge is complete, we humbly refer to your Majesty's consideration, how far that shall be touched.

After which charge so given, the examinations read, and Sir Walter heard, and some to be confronted against him, if need be, then he is to be withdrawn and sent back; for that no sentence is or can be given against him. And after he is gone, then the Lords of the Council and Judges to give their advice to your Majesty, whether in respect of these subsequent offenses, upon the whole matter, your Majesty, if you so please, may not with justice and honor give warrant for his execution upon his attainder. And of this whole proceeding we are of opinion that a solemn act of council should be made, with a memorial of the whole presence. But before this be done, that your Majesty may be pleased to signify your gracious direction herein to your Council of State; and that your Counsel Learned, before the calling of Sir Walter, should deliver the heads of the matter, together with the principal examinations touching the same, wherewith Sir Walter is to be charged, unto them, that



they may be perfectly informed of the true state of the case, and give their advice accordingly. All which nevertheless we, in all humbleness, present and submit to your princely wisdom and judgment, and shall follow whatsoever it shall please your Majesty to direct us herein with all dutiful readiness.

Your Majesty's most humble,  
and faithful servants, etc.

YORK HOUSE, this 18th of October, 1618.

Though this letter is very well known, its importance as an evidence of the opinion of the commissioners upon the case has not I think been sufficiently observed; probably because of the obscurity which has hitherto hung over the dates of their proceedings. But it will now be seen that after a thorough investigation of the charges and the evidence, they were prepared to recommend a form of proceeding in all essential respects public and judicial: the audience to consist of the Council, the Judges, and some of the nobility and gentry: the charges to be preferred, the evidence produced, and the defendant heard in reply, exactly as they would have been in an ordinary trial: the decision to be taken by advice of the Council and Judges publicly given: and a formal record to be made of the whole proceeding. *They* must have thought therefore that it was a case which would bear public criticism: and a close tribunal cannot give better proof of the sincerity of its judgment than by desiring to submit it to an open one.

The recommendation was adopted in part: but unfortunately with the omission of that which was most material in it, — the provision for publicity. Why their advice was not followed altogether, has hitherto been matter of conjecture; but can now be explained on authority. Among the papers recently discovered by Mr. Fortescue there is the draft of the King's answer to this

letter. It is written in the hand of Packer, Buckingham's secretary, and has no signature or docket. But as it agrees exactly with what followed, we need not doubt that it is a true copy.

"Right trusty and well beloved Counsellors, we greet you well. We have perused your letter touching the proceeding with Sir Walter Raleigh, in both which courses propounded by you we find imperfection. As first we like not that there should be only a narration set forth in print of his crimes, together with our warrant for his execution. And secondly for the other course of a public calling him before our Council, we think it not fit, because it would make him too popular, as was found by experiment at the arraignment at Winchester, where by his wit he turned the hatred of men into compassion of him. Secondly it were too great honor to him to have that course to be taken against one of his state which we have observed never to have been used but towards persons of great quality, as namely, the Countess of Shrewsbury and some such. Besides it would make too great a stir to have such sending of advice and directions to and fro as you mention in your letter. We have therefore thought of a middle course, that he be called only before those who have been the examiners of him hitherto, and that the examinations be read, and himself heard, and others confronted with him, who were with him in this action. And that our Attorney and Solicitor be employed to inform against him [touching his acts of hostility, depredation, abuse as well of our commission as of our subjects under his charge, his imposture, attempt of escape, and other his misdemeanors].<sup>1</sup> Only for the French we hold it not fit that they be named but only by incident, and that very lightly, as that he should have escaped in a French bark [without drawing them into the crime.]<sup>2</sup> And then after the sentence for his execution which hath been thus long suspended, a declaration be presently put forth in print, a warrant being sent down for us to sign for his execution."<sup>3</sup>

<sup>1</sup> The words within brackets are interlined in the MS.

<sup>2</sup> The words within brackets are struck out in MS.

<sup>3</sup> On the other side of the leaf is written, "Wherein we hold the French Physician's confession very material, as also his own and his consorts' confession, that before they were at the Islands he told them his aim was at the Fleet, with his son's oration when they came to the town, and some touch of his hateful speeches of our person."

It is a letter very characteristic of the King, and it was quite true that Raleigh's wit was a formidable weapon to encounter in the court of popular opinion; especially where so many were disposed not only to excuse but to applaud the very offense which was to be laid to his charge. But it was a danger which could only be overcome by being met. On the former occasion it was really his own wit that won his triumph; for the popular feeling was against him; and if the trial could on any plausible pretext have been conducted with closed doors, no voice would have been heard on his behalf. But now very little wit was wanted to make his cause gracious; and whether his defense was conducted by himself or by others for him, the closing of the doors was enough in itself to make it triumphant with the people outside. Surely James was never worse advised than when he rejected that part of the advice of his commissioners. A formal proceeding like that which they recommended did take place before themselves. The charges were opened and explained by the Attorney and Solicitor General; the depositions of the witnesses that had been examined were (I presume) read: Sir Walter was heard in his own defense, and some of his fellow-voyagers were produced in person to confront him. But there was no audience, no judges, no declaration of the reasons which made this unusual form of proceeding necessary, no application to the Council for advice, no public record of the proceeding. So that for explaining and justifying to the people an act which at the best must be unpopular, it was absolutely of no use. So useless indeed it was that I do not find it so much as alluded to afterwards; and if it had not been for the accidental preservation and discovery of Sir Julius Cæsar's notes of the day's work, we should not have known that any such thing had been. It informed the commissioners of what they knew already. It may possibly have brought to their knowledge some

things which had escaped them. But it added no grain of weight to the value of their report in the eyes of the people, to whom the true grounds of the proceeding — the “late crimes and offenses” — were (as the commissioners took care to remind the King) as yet unknown. To us who know a great deal more than the people then knew, and yet not nearly so much as we could wish, Sir Julius’s notes are of considerable value ; and would be of very great value if they were a little fuller and did not break off at the most interesting part. But they give merely the heads, nakedly set down for the assistance of his own memory ; and all we can learn from them is the order of the proceeding and the principal topics, up to a certain point. For though the thing has not been noticed (so far as I know) by any one else, it is evident to me that what we have is only the first sheet, and that the rest has been lost. And I think this would have been evident to anybody, if he had examined the manuscript carefully, and observed how the paper had been folded, and in what order the pages presented themselves to the writer. Take a sheet of letter-paper ; double it cross-wise ; double that again lengthwise ; and begin your notes upon the column which then lies uppermost. When that is full, take the next which meets you as you turn the leaves without cutting them ; and then the next ; and so on, till on coming to the seventh you find it already written on. If you want more, open the sheet into its original state — the folio of four pages — and you will find two columns left blank in the middle. When these are filled, one side of the paper will be full. It appears to have been Sir Julius’s ordinary practice to take his notes in this way ; and when he had used up that side of his first sheet to take a second. In the bound volume the order of the columns (which are not numbered) is not at first obvious, because each sheet is spread out into a single leaf. But it will be found on examination that

in this case the last sentence is at the end of the last column.

From what remains of these notes we learn that the charge was distributed into three general heads: "Faults committed before his going the last voyage. Faults committed in his voyage. Faults committed since:" that of these the two first were set forth by the Attorney General, and the third by the Solicitor: and that then Raleigh gave his answers upon all the points in succession.

Of the speeches of the two lawyers it is not necessary to say anything here. They represent the case as understood by the commissioners, and of this we have, in the official "Declaration" which was put forth a few weeks later, a perfect exposition. But the note of Raleigh's answers, though very meagre, tells us something which we do not otherwise know, and is worth printing entire: the rather because those who have undertaken to give the effect of his reply have seen more in it than I can find.<sup>1</sup>

#### "SIR WALTER'S ANSWER.

1. That he verily thinketh that his Majesty doth in his conscience clear him of all guiltiness for his fact of an. 1. And that he hath heard that the King said that he would not be tried by a Jury of Middlesex. Archelaus<sup>2</sup> in the 2 Book of Macca-

<sup>1</sup> "To these frivolous charges Sir W. Raleigh *calmly* answered, etc. He appears to have evinced in these examinations *the same spirit and eloquence and the same remarkable moderation and temper* which he had displayed in his trial at Winchester." (Jardine, p. 488.) *He was never at a loss*, and he threw the main force of his address upon the weak points in the prosecution. He *indignantly* repudiated the supposition that the mine had no real existence," etc. Gardiner, ii., p. 142.

<sup>2</sup> Menelaus. See II. Maccabees, chap. iv. v. 47. But the note seems to be otherwise incorrect; for Menelaus was not unjustly condemned, but unjustly *acquitted*. "Of these matters therefore there was an accusation laid against Menelaus. Now when the King came to Tyrus three men that were sent from the Senate pleaded before him: but Menelaus, being now convicted, promised Ptolemee the son of Dorymenes to give him much money if he would pacify the King toward him. Whereupon Ptolemee taking the King aside unto a certain gallery, as it were to take the air, brought him to be of another mind: insomuch that he discharged Menelaus from the accusations, who notwithstanding was cause of all the mischief, and those poor men who, *if they had told*

bees his speech—"That [if] he had been amongst Scythians he had not been condemned."

That Dr. Turner told him that Justice Gawdy upon his death-bed said that the justice of England was never so depraved and injured as in the condemnation of Sir Walter Raleigh.

#### ANSWER TO MR. ATTORNEY'S FOUR OBJECTIONS.

1.<sup>1</sup> He intended a mine, carried refiners and tools to his charge of £2,000 with him, and trusted Captain Kemish, in whom also they confided, to find the mine, and the force he sent was not to invade them of St. Thomas, but to keep between them and the mine, lest the Spaniards should interrupt them in their search and work.

3.<sup>2</sup> He abandoned not his men, as is reported by Sir John Ferne, nor to have gone away and left them in the Indies.

2.<sup>3</sup> He denieth it.

4.<sup>4</sup> He denieth it.

#### HIS ANSWER TO MR. SOLICITOR'S OBJECTIONS.

1, 2.<sup>5</sup> He sought not to escape till his arrest by Sir Lewis Stukeley, and afterwards he confesseth to have endeavored to escape.

3.<sup>6</sup> *Fatetur facinus qui judicium fugit, vel simulat se fatuum vel insanum, cum non sit, ad fugiendum judicium.* Sir Walter did confess it, excusing himself therein by the example of David being with King Achis and feigning himself mad.

4.<sup>7</sup> Confesseth that he said that his confidence in the King *their cause, yea, before the Scythians, should have been judged innocent*, them he condemned to death. Thus they that followed the matter for the city and for the people and for the holy vessels did soon suffer unjust punishment. . . . And so through the covetousness of them that were of power Menelaus remained still in authority, increasing in malice and being a great traitor to the citizens." It is difficult to guess from the form of the note how Raleigh applied the passage. It seems to be a precedent of a King persuaded by a corrupted councillor to condemn an innocent man to death.

1 "That he never intended a mine."

2 "He abandoned and put in danger all his company."

3 "He purposed to set war between the two Kings of England and Spain."

4 "His unfaithful carriage to the King and his company."

5 "1. His purpose of flight before commandment laid upon him.

2. His endeavoring to fly after the arrest upon him."

6 "His impostures to deceive the King and State."

7 "His vile and dishonorable speeches, full of contumely to the King."

deceived him, but denieth that he used any other ill speeches about the King.

And being confronted with Captains St. Leger and Pennington confessed that he proposed the taking of the Mexico fleet if the mine failed.

See the letter dated 12 July, 1611, in the counsel book."

This brings us to the end of the sheet: but it can hardly have been the end of the proceeding. That there is no mention anywhere of the reading of examinations, which was certainly intended to follow the charge, may perhaps be explained by supposing that Sir Julius did not want any note of them, seeing that he had access to the originals. But this abrupt transition, after the *Solicitor's* objections had been all answered, to the production of Captains St. Leger and Pennington upon a point touched in the *Attorney's* speech and near the beginning of it, would be best accounted for by supposing that after they had heard his answers to all the charges, they proceeded to reply to them again by producing and re-examining the witnesses. The *Attorney's* second objection, — that Raleigh "purposed to set war between England and Spain," — supported by the fact that when the pillage of the town yielded little he resolved "to make his voyage upon the Mexico fleet," — he had met by a general denial. When, in answer to that, the two captains on whose authority the statement had been made were produced in person to confirm it, he (according to the "Declaration") "confessed the words, but saith that, in time, they were spoken after the action of the mine was defeated;" and so far Sir Julius's notes and the official Declaration agree. But then follows a material difference. If the notes are to be taken as complete, that was all he had to say: whereas the Declaration makes him add, that "it was propounded by him to the end to keep his men together; and if he spake it before it was but discourse at large." Now such a qualification of his con-

fession seems to me too important to have been overlooked or omitted even in the most cursory note ; and I have little doubt that it would have been found in the beginning of the next sheet, followed by other evidence and answers of the same kind :<sup>1</sup> and lastly by the sentence (for it is evident that the King meant the proceeding to end with a sentence), — that is, by a declaration of the Commissioners that in their opinion the former sentence might, under the circumstances, be justly carried into execution.<sup>2</sup> But if my speculation be correct, the conclusion must remain a matter of conjecture until the lost sheet or sheets of Sir Julius's notes shall be found. In the mean time it will be seen that, though we have here evidence of one important admission, there is little else in these notes which throws any fresh light on the case ; and that as to the character of Raleigh's defense, — whether it was strong or weak, plausible or unplausible, — they give us no means whatever of judging.<sup>3</sup> The proceeding was meant

<sup>1</sup> Among which I should expect to find something about the mining tools, of which Napier makes a point of some importance. "It was distinctly asserted," he says, by Raleigh in reply to Yelverton that he incurred an expense of £2,000 in providing both "miners and instruments of mining ; an averment which, if not substantially true, would assuredly have been rebutted by those of the expedition with whom he appears to have been then confronted." (*Edin. Rev.*, April, 1840, p. 20.) Now the Declaration states, with regard to the Pioneers, that "it is testified of all parts, and *by himself confessed*, that he carried none at all ;" and as to instruments for mining, that "it is true he carried some small quantity for a show, but *by the judgment of all that were in his company* nothing near sufficient for that which had been requisite for the working of the mine ; which he *excused* only by saying that his men never saw them unpacked, and that the mine was not past a foot and a half underground." No doubt therefore he *was* confronted, and thereby driven upon that excuse.

<sup>2</sup> The letter in the Council Book — if it was, as Mr. Gardiner suspects, the proposal made to the Lords in 1611 (see above, p. 287) may have been appealed to on either side : by Raleigh, as proving that the use of force against the Spaniards was known to be intended, "if they began the war ;" by the prosecution, as showing that a proposal implying the probability of a collision with Spaniards had been made *and rejected*. It may, therefore, have come in in the course of Raleigh's answer to this charge, and the important qualification mentioned in the Declaration may have followed.

<sup>3</sup> Mr. St. John in his *Life of Raleigh* refers to a letter from Julian Sanchez de Ulloa, dated 16 November, 1618 (which would be 6 November according to English reckoning), — addressed to his own government and preserved at



to be private, and its privacy was strictly and successfully preserved. But it took away all its value.

Nor was the King much more fortunate with the alternative proposal of the Commissioners. They recommended, if there might not be a regular trial before a public audience, that the warrant for carrying the sentence into execution should be accompanied with "a narrative in print of his late crimes and offenses." And to this the King seems in his answer to assent. But unfortunately the essential part of the recommendation — the point of time — was not attended to. Raleigh received notice to prepare for death on the 23d of October. About the same time (I presume, for the exact date is not stated) the Judges of the King's Bench were directed to order the immediate execution of the old sentence. On the 28th he was brought to the bar, and called upon to show cause why execution should not be awarded. No cause being shown which the Court held to be sufficient, execution was granted; and the next day he was brought into old Palace Yard to be beheaded. By some unaccountable mismanagement, the narrative which was to contain the justification of his execution was not forthcoming. All that was publicly known was the Procla-

Simancas, — in which he seems to have given from hearsay some particulars of this proceeding. From this it would appear that it took place on the 22d of October. Whether we may also infer that Raleigh's defense lasted four hours, or only that the case occupied the Commissioners so long, I am doubtful. It may be only Mr. St. John's way of writing. But I will give it in his own words. "As far back as the 22d the die was cast, though the public knew it not, for on that day Raleigh, having been taken from the Tower to Whitehall, was told what had been resolved respecting him. For some particulars of what took place in *the four hours during which Raleigh pleaded for his life*, we are indebted to a foreign witness, who, however, has omitted others which we should have been glad to learn . . . 'I have been told,' says Ulloa, 'that the Lord Chancellor of England censured him greatly for the injuries he had done to the vassals and territories of your Majesty, and dwelt on the manner in which he had abused the permission to put to sea granted him by this King, when his professed object was to discover a gold mine, which he had affirmed he knew where to find. In conclusion, he informed him that he must die.' " Vol. ii., p. 338.

mation, the general result of the voyage, and the proceeding of the previous day before the King's Bench; where "the *new* crimes and offenses" were not allowed to be brought under discussion, and the only point argued was the validity of the old attainder. What wonder that people thought he was punished for the old offense, and were driven to strange conjectures to account for it? The just and rational course of open accusation, evidence, and defense had been declined for fear of the effect on a popular audience of Raleigh's eloquence. And yet he was left to make his last speech, under circumstances which would have insured an indulgent hearing for the most unpopular criminal, before an audience deeply prejudiced in his favor, and utterly in the dark, not only as to the evidence against him, but as to the very nature of the accusation; and this too when he had the whole stage to himself; there being nobody to represent the other side; no possibility of explanation, confutation, or counteraction; and when the only way to prevent him from making himself as innocent as he pleased and working upon his hearers what impression he would, was that which would have spoken for him more eloquently still, — namely, to interrupt and silence him.

Perhaps it was thought that after he had spoken his last words, and it had been seen what impression they made upon the people, it would be easier to judge what kind of declaration was needed for public satisfaction. But if so, the enormous advantage which belongs to the first impression — when made upon minds predisposed to receive it favorably and unprovided with any counter-impression to meet it with, and then left at leisure to settle and fix itself — must have been quite overlooked. That this state of things should have been permitted for a single day is strange. That it should have been allowed to remain undisturbed for more than three weeks is to me one of the most unaccountable facts in history.

When the Declaration came at last, it appeared that the case was at any rate quite different from what people had supposed; but it addressed itself to minds made up; and though justly described as "a declaration of the demeanor and carriage of Sir Walter Raleigh . . . and of the true motives and inducements which occasioned his Majesty to proceed in doing justice upon him as hath been done," it was received as a mere official apology, and had the usual fate of such compositions in being generally discredited. How far it deserved this fate is a question upon which I hope to throw some new light, when it comes before me in its place. But for the present Raleigh had the stage to himself, and he made the most of his opportunity. No tragic scene in real life was ever so finely acted. Judged by its effect upon the audience, which is the true test of speech, — and not only upon the audience then assembled in old Palace Yard, but (through them) upon all succeeding generations, up to the present day, — his speech from the scaffold was a triumph of eloquence. "Though he spoke not much," says Sir E. Harwood writing to Dudley Carleton, "yet that he did was with so much assurance, so Christianly and so like truth, as all his beholders were possessed he died innocent, not only of the treason but of late new practices, and of ill speeches of his Majesty, and of justly<sup>1</sup> injuring the King of Spain." And yet when the fullest reports of his speech are examined, it is strange to find how little there is in it, tending to alter the aspect of his case to any impartial eye. The charges from which he labored to defend himself were in fact of so little importance that in the preceding narrative (from which I wish to exclude everything disputable) I have scarcely thought it necessary to mention any one of them. Those which constitute his real offense, he scarcely touches. The two imputations from which he seems to have been

<sup>1</sup> So in MS. I suppose it should be "unjustly."

most anxious to free himself were, first, that of having "some plot or intelligence with the French King,"<sup>1</sup> and secondly, that of having "spoken dishonorably and disloyally" of King James. Both of which he met with a denial so solemn, and enforced with such awful imprecations, that I am glad I have no occasion to question it in either case. That he had attempted to escape, and to the end feigned sickness, and that he had promised Stucley that if he would go with him, his debts should be paid — all this he confessed to be true. But these were acts for which, though in a harsh construction they might be called breaches of parole, one can hardly blame him as his case was; and perhaps it would have been well if they had been more successful. Upon the charges which came nearer to the real question, — as that he did not know of any mine, and did not mean to go to Guiana at all; that he meant to escape with the money he took out, and not to return to England; and that he had proposed to quit the place of rendezvous without waiting for the river party, and so leave them to their fate, — his denial was distinct enough; but it implied nothing incompatible with the main charge. That "it was his full intention to search for gold, — for gold for the benefit of his Majesty and himself and of those that ventured with him, with the rest of his countrymen;" and that he believed that Captain Keymis "knew the head of a mine" where gold was to be found; all this may have been quite true, without implying any justification whatever of the means he took to get at it. That he had given his promise to Lord Arundel, immediately before he sailed, "not to turn

<sup>1</sup> From what he is reported to have said on this point, Mr. St. John thinks himself justified in rejecting the report of the whole speech, as a misrepresentation of his words. "What we possess under that name" [the speech on the scaffold] "it is impossible he should have uttered, unless we assume the letter to James of the 5th of October, together with his examination, and those of La Chêne, and all his communications with the French authorities, to be forgeries." (Vol. ii., p. 347.) This being Mr. St. John's way of dealing with his evidence, I have not thought it necessary to examine his conclusions.

pirate when he got abroad, and whether he made a good voyage or a bad not to fail to return again to England," was avouched by Lord Arundel himself, who was present. That he had kept his promise, was an apparent fact which could not be disputed. But it did not follow that he would have kept it if he had found he could do better. That it was never his intention "to go away from his company and leave them at Guiana," is an assertion which I am quite willing to accept on his own authority, being a thing which he only could know, and upon which he appeals to several witnesses whose evidence we have not the means of examining. And these (with exception of a disavowal of all concern in the death of the Earl of Essex — which had nothing to do with the present case) were all "the material points which he thought good to speak of."<sup>1</sup>

What was it then in this speech, if there was so little to alter the appearance of the case, which so enchanted and still continues to enchant the world, that the charge of burning and pillaging a town containing one hundred and forty houses, a church, and two convents, with a governor and garrison, — belonging to another and a friendly nation, and having offered no provocation whatever except an attitude of self-defense, — appears to an English gentleman and lawyer in the year 1832 vague, senseless, and frivolous? I believe it was merely the manner of delivery. Raleigh was a man without fear, and with an understanding perfectly clear and serene. As long as he saw a chance of a life worth living, he had played boldly for it: and the devices to which he resorted (though to some of his admirers they have seemed so unworthy of him as to suggest a suspicion that his mind had for the time given way) were conceived and conducted with a ready wit, an activity, an ingenuity, an audacity and gay contempt for his enemies, characteristic of his best time.

<sup>1</sup> His own words, according to Jardine, p. 508.

When he found that the chance was gone, and that his fate was to be death, he had the same faculties and the same spirit at command to meet it with. He was sixty-six years old. He knew of how little value to him any life was that he could expect in the course of nature. He knew that death was as easy at one time as another, and that the violent death was the easiest. The fear of it, he said, "was but an opinion and imagination," and for the manner, "though to others it might seem grievous, yet he had rather die so than of a burning fever." He had no troubles of conscience; for he had done his best to do the King a piece of good service against his will, and he had hurt nobody except Spaniards in the Indies. And the publicity and solemnity and tragical apparatus seems to have had the effect on his nerves of an agreeable excitement. Everything that he said and did was done in the best possible taste — without any touch of passion or bitterness or bravado — but with the most unaffected and cheerful composure, the finest humanity, the most courtly grace and good humor; and yet no unseemly levity, but a full recognition of the solemnity of the occasion, and the presence in which he was about to appear. If it was acting, — and the effect of his behavior upon the audience had a place no doubt in his thoughts, — it was the very finest acting conceivable. Shakespeare died two years before, or one might have thought that the famous description of the death of the Thane of Cawdor was suggested by that of Raleigh.

He died

As one who had been studied in his death  
To throw away the dearest thing he owed  
As 'twere a careless trifle.<sup>1</sup>

<sup>1</sup> Dudley Carleton, a contemporary observer whom nobody has a right to treat with contempt, would have completed the quotation —

"Nothing in his life  
Became him like the leaving it."

"It seems," he says (replying to Chamberlain's report of the execution),

He had formerly boasted that he *despised* death. But his meditations in the Tower had raised his mind to a still higher elevation; for his entertainment of it on the scaffold was not with contempt, but rather with polite and courtly welcome. Never was death by the public executioner so completely cheated of its victory.

There is something so imposing to ordinary minds in this easy superiority to things which seem to them so terrible, that it is not strange if among the mass of the audience all other thoughts were lost in admiring contemplation, and all oppugnant criticism silenced for the time; and if it be true that the King had postponed his own declaration till now, that he might first hear what Raleigh would say and how it would be received, it may be that when he knew what he did say, and with what effect, he thought it better to postpone it awhile longer, that the first impression might subside. But this again was doubtful policy: for the impression showed no symptom of subsiding. "We are still so full of Sir Walter Raleigh," writes Chamberlain in forwarding some papers to Carleton three weeks after, "that almost every day brings forth somewhat in this kind; besides divers ballets; whereof some are called in, and the rest such poor stuff as are not worthy the overlooking. But when the heat is somewhat allayed, we shall have a declaration touching him that shall contradict much of that which he protested with so great asseveration. But the proofs had need be very pregnant and demonstrative, or else they will hardly prevail."

The proofs, in order to prevail, had need not only to be pregnant and demonstrative, but to be presented to minds equally excited, and with surrounding circumstances as picturesque, impressive, and pathetic. And this was manifestly impossible. The most conclusive an-

"that he knew better how to die than to live; and his happiest hours were those of his arraignment and execution." — *Court and Times of James I.*, vol. ii., p. 106.

swer could be no better than an argument in a book ; and what book could make an impression on the popular imagination lively enough to counteract the image of the living man speaking for himself on the scaffold, in the minds of those who saw and heard him ?

The Declaration which Chamberlain was looking for had been for some time in preparation. But one of the inconveniences of neglecting to proclaim the true causes of his execution at the right time was the want of an occasion which might seem to call for it afterwards : if it was not wanted then, it might be asked, why is it wanted now ? And the occasion which was made to serve this purpose was not a very happy one. When the news went abroad that Raleigh had been arrested by Sir Lewis Stucley in an attempt to escape into which Sir Lewis had himself betrayed him, there was a great burst of popular indignation. Of the true history of his proceedings since his first arrest nothing was known ; but it was known that he had been betrayed, and the word was enough. Sir Lewis (now popularly saluted as Sir Judas) who, to do him justice, does not appear to have had any object besides the faithful performance of his commission, which was to bring Raleigh up to London that he might be disposed of as the Lords of the Council should direct, — a commission which it was surely no crime to undertake, — was not prepared to endure this kind of language in silence. He tried to clear himself of the imputation of treachery by explaining that he had been as easy and indulgent as possible with his prisoner until he found that his indulgence was abused, and that it was only the detection of a plot to give him the slip, followed on its failure by an attempt to bribe him into connivance, that put him upon contriving a counterplot : for which also he had warrant from the King, to whom he had first reported the facts. This he set forth in a short paper, called his “Apology,” which seems to have been written



immediately after he resigned his charge ; and consists of a simple, straightforward, inartificial statement, without any rhetoric or special pleading, but very much in earnest, and (as far as I can see) quite true. For it cannot be denied that the game of double dealing had been begun by Raleigh himself ; that his treatment of Stucley (who had been for many days his easy dupe) had deprived him of all title to favor or confidence ; that the stratagem by which he was caught, though it involved dissimulation and deceit, was one of those which are always allowed in war ; and one which, even in peace, if the parts had been reversed, — if it had been used by Sir Walter to baffle Sir Lewis, — would have passed with general allowance, if not with general applause and congratulation : and that the object aimed at and effected by it was after all nothing more than safe keeping in order to judicial inquiry, in a case which evidently demanded it. For if the stratagem had been omitted altogether, and Raleigh had at once on the discovery of his plot to escape been transferred to the Tower, — a measure to which no one could have objected, — he would have gained nothing by the difference except the power of denying the *intention* to escape — which, as it was, he could not do. He had been betrayed into a position which compelled him to admit the truth : that was all : and Stucley's "Apology," as drawn up by himself, seems to me fair and sufficient. But when popular sympathy runs strongly the other way, reasonable considerations are opposed to it in vain. In spite of his "Apology," and in spite of the rumors which began to get abroad as to Raleigh's own dissimulations, the stream continued to run against him : and when Raleigh on the scaffold "forgave" him with an unction and an emphasis which scarcely needed the charitable "warning" which followed to make it stir popular indignation,<sup>1</sup> his position became so uncomfortable that

<sup>1</sup> "I forgive this Frenchman and Sir Lewis Stucley, who was also a witness

he appealed to the King for help. His appeal was in the form of a petition, consisting of a recital of facts with answers to the aspersions of which he complained; and ended with two requests: first that he might have leave to confirm the truth of his statement by receiving the sacrament upon it in his Majesty's chapel; and secondly (which was more to the purpose) that "a declaration" might be suffered to come forth "from the State, for the clearing of these matters and further satisfaction of the world." The request was reasonable. The King owed as much, not to Stucley only, but to himself. For the world was talking, thinking, and feeling with passionate excitement about matters of which it had no means as yet of knowing the true history, or anything like it. That Raleigh's "late crimes and offenses were not as yet publicly known," was still as true as on the 18th of October when the Commissioners called the King's attention to the fact. But Stucley—thinking perhaps that his first defense had failed of effect for want of literary skill—had now called in the aid of a practiced penman to point the sentences; under whose hands the composition lost all that appearance of simplicity and sincerity which formed the merit of his own "Apology," and assumed a shape as unfit as possible either to convince or to conciliate an ill affected public. The writer was said to be Dr. Sharpe. Whoever he was, he succeeded in exhibiting the unfortunate Sir Lewis in an attitude and frame of mind as insolent and offensive as he could, and as well contrived to turn everybody against him; and in making his petition a most unfortunate precursor for the manifesto which the government were preparing. It supplied, however, the occasion which was wanted; and was made to serve for a kind of advertise-

against me in my flight, with all my heart. . . . I have received the sacrament this morning and I have forgiven all men. But that these two men are perfidious, I am bound in charity to speak, that all men may take heed of them." Jardine, p. 565.

ment. At what time the "Petition" had been drawn up and presented, we do not know, but it was published by the King's printer on the 26th of November, and an effort was made to get the Declaration out immediately after. "Sir Lewis Stucley's petition" (so Naunton writes to Buckingham on the 27th) "was published yesterday; the declaration is this day, upon the dispatch of this packet, to follow after. The printer hath sent me two copies of each, for his Majesty and the Prince, and prays pardon for some escapes committed in their haste; which was such as they were fain to watch two nights, and set twenty presses to work at once."

Perhaps it was thought that the Petition would create a desire for information without satisfying it, and so give the Declaration a greater value. Chamberlain's report of their first appearance suggests some such relation between them. Writing the next day, he says: —

"You will find little in Sir Lewis Stucley's Apology<sup>1</sup> but that they strive to beray one another. It is like we shall have no further Declaration if this may satisfy, which hitherto finds little credit.

"But now when I am come thus far, my man brings me an authenthical declaration of all that business. I have not read a word of it (more than the title); for it came forth but this morning: and, as I hear, it is the work of the Lord Chancellor, Mr. Attorney, or Secretary Naunton; or rather fathered upon all three: so that in all probability it must be as true as well written."

The allusions to it in Bacon's letters to the King and Buckingham indicate a joint composition, but one in which he was himself concerned. And though it is impossible to say how much of it was his own, yet, judging by the style, I incline to think that the greater part was either wholly written or largely corrected by himself. To call it "Bacon's Declaration," as Mr. Edwards does,

<sup>1</sup> Meaning, I think, his *Petition*, which had been published two days before.

is both inaccurate and misleading. To call it "the King's Declaration," as has been done by others, is nearer the truth; for though not written by his hand nor issued in his name, it was issued with his knowledge and permission, as a manifestation of his mind. But its proper title is "the official Declaration:" a declaration drawn up by the King's direction, penned by certain Councillors (Bacon being one), allowed by the Council, and printed by authority. Bacon's rank in Council, together with his concern in the actual composition, entitle us to impute to him a large share of the responsibility: but as he spoke in the name of others, and his authority was not absolute, to charge him with the sole responsibility is a mistake.

Wherever I have been able to compare the statements in this Declaration with the evidence upon which they were made, I have found them to be very careful and conscientious; and I have no doubt that the narrative may in all parts be depended upon for strict accuracy, so far as accuracy was attainable by studious comparison of conflicting witnesses. But it is much to be regretted — and must I think have been a great error of judgment in the King or his Councillors — that this evidence was not made public at the same time. Official statements put forth in excuse of the Government are always apt to be suspected, because they are not exposed to criticism and those who want the excuse tell the story. In a case like this, where the excuse had to be made good in the face of a strong popular prejudice, it was doubly necessary to exclude all doubts as to the fidelity of the narrative; and this would have been done most effectually by publishing the depositions. Why it was not done is not explained. It may have been from over confidence in the strength of the case; or it may have been from consideration for the deponents, whom the popular judgment would perhaps have voted to be false witnesses, and treated accord-

ingly. That it was *not* because they would have failed to bear out the official story, I infer from the tenor of all those which I have seen. For though most of them have disappeared, a few have luckily survived; and that these at least might have been cited as witnesses every way unexceptionable in confirmation of the story as told by the government,<sup>1</sup> which story, though it cannot claim the authority due to a judicial sentence by a judge who has no interest in the cause, framed as it was by those who were responsible for the action which it was written to justify, although, therefore, it is fairly open to such suspicions as must always attach to statements made in self-defense, I may surely claim such attention as statements made in self-defense are always held to be entitled to. Let it by all means be analyzed, criticised, confronted, disputed, and (where it can be convicted of error) set aside. But why should it not be heard? Now although, when I remember the importance which is claimed for it by Hume, I cannot suppose that its existence is not generally known; yet when I read the statements of the case as commonly set forth in our popular biographies and histories of state trials, I can hardly think that it has been read by the writers. For I find almost invariably that all the material points are omitted: and when I inquire in what particulars it is inaccurate and how the inaccuracy is proved, I find scarcely anything to enlighten me. I cannot indeed profess to be acquainted with all that has been written on the subject, and the question may have been satisfactorily answered in some book which I have not seen: but I cannot at present recall more than two particulars in which the

<sup>1</sup> The plan of the present work does not admit of the introduction of collateral matter of this kind. But in the larger work from which it is extracted as many of these depositions as I have met with, together with all other contemporary evidence, bearing either way upon the matter treated of in the official narrative, that I could find, are set forth at length in the form most convenient for comparison with it.

truth of the narrative has been definitely challenged: one of which is a very small and immaterial error, if it be an error at all; and the other is merely an opinion stated to be erroneous, upon a question on which opinions differ.

Mr. Edwards has taken exception to the statement that Raleigh dealt with the owner of the French barque for a passage from Plymouth "*before* he was under guard;"<sup>1</sup> and it is true that according to Captain King's narrative (as quoted by Oldys) it must have been *after* he had been arrested. But Captain King's narrative was not written till after the Declaration was published, and we do not know what other evidence the Commissioners had before them.<sup>2</sup> That they were in error at all may still be doubted. That the error, if any, was immaterial, may be seen by this, — the correction of it does not alter the case; a reasonable apprehension of arrest being as good a justification of the attempt to escape (if any justification were needed) as the arrest itself; and a cause for reasonable apprehension having been already furnished by the Proclamation. All that the attempt to escape could prove in either case was that Raleigh did not mean to trust himself in the hands of government if he could help it; and an attempt to escape "*before* he was under guard" did not prove this more conclusively than an attempt *after*.<sup>3</sup>

Mr. Gardiner, on the other hand, who has been careful

<sup>1</sup> "Before *Stucley's* arrival at Plymouth," are Mr. Edwards's words. But I have only to deal with the real ones.

<sup>2</sup> They must have had some kind of evidence that he had meditated escape before the arrest, because in the proceeding before the Commissioners, among the "faults committed since his voyage," the first was "*his purpose of flight before* commandment laid upon him," and the second "*his endeavor to fly after* the arrest upon him." It is true that he denied the first charge, asserting that "*he sought not to escape till his arrest by Sir Lewis Stucley.*" But it is still possible that the Commissioners knew better.

<sup>3</sup> It is to be observed that Raleigh himself, on the scaffold, alluded to the fact, almost in the same terms which were afterwards used in the Declaration, without denying it. He alluded to it as one of the facts which gave the King

to compare the statements in the Declaration with the testimony of independent witnesses, and concludes that "it was founded upon the evidence taken," and contains nothing which the authors did not believe to be true, finds nevertheless an error at the bottom of it which renders the superstructure "altogether false as a whole." This error was the assumption that Raleigh did not believe in the existence of the mine. "Starting from the theory that the mine was a mere figment of Raleigh's imagination, they could not fail," he says, "to misinterpret the facts before them."<sup>1</sup> I do not, however, understand them to have adopted the theory before they looked at the facts; but to have arrived at it by way of inference from the facts. If the inference was wrong, they must no doubt have misinterpreted some of them, but not necessarily all, or those which were most material. I have already expressed my own opinion that the question whether Raleigh did or did not believe in the existence of

"just and weighty reason to believe" that he had had some plot with France. He denied the plot, but not the facts which justified the suspicion, of which the first was "that when I came back from Guiana, *on my arrival at Plymouth, I endeavored to have passed over in a small bark to Rochel.*" These are his own words, as reported: and the fact is by implication admitted. In the Declaration the same fact is alleged to prove, not any plot with France, but a desire to escape from England; and the words are "for soon after his coming to Plymouth, before he was under guard, *he dealt with the owner of a French bark,*" etc. The parenthetical clause was inserted in order to explain how it happened that, having missed that opportunity, he found no other: the reason being that afterwards he was better guarded. If Raleigh had thought it as important as Mr. Edwards does to state that his attempt to escape was consequent not on his arrival at Plymouth but on his arrest by Stucley, he would surely have expressed it so.

With regard to the expression "before he was under guard"—for which Mr. Edwards substitutes "before Stucley's arrival at Plymouth" (as if it were an equivalent)—it is to be observed that he was so little under guard at that time that according to Captain King, as quoted by Oldys, "he was sometimes two or three days without seeing Sir L. Stucley:" and according to Raleigh himself, in one of the reports of his last speech, Sir Lewis "left him nine or ten days to go where he listed, while he rode about the country." (Oldys, p. 519.) It is clear therefore that in any sense of the words suitable to the context, though it was not before Stucley's arrival at Plymouth, it *was* before he was "under guard."

<sup>1</sup> *P. Charles and the Sp. Mar.*, i., p. 152.

the mine is comparatively immaterial, — the material question being whether he believed that the thing he was going to do was within the limits of his commission ; and I cannot understand how the assumption that the mine was a pretense should have made it impossible to relate truly what he did in the pretended pursuit of it. His motives may have been misinterpreted ; but if the evidence was fairly taken and duly weighed, his actions were represented correctly ; and it was with his actions, not his motives, that the law was concerned. But to believe that he knew — that is, that he thought he knew (for I do not understand Mr. Gardiner to maintain that there was such a thing) — of a particular mine to be found in a particular place, is to me difficult. In the first place what reason had he to think so ? If I understand Mr. Gardiner right, all he knew about it was this : In 1595, Captain Keymis was going down the valley of the Orinoco with an Indian guide. At a particular place he observed his guide stop and make signs as if he wanted to show him something. Supposing it was only a waterfall, he would not turn aside, but went on and thought no more about it. The next year he was on the Orinoco in the same region, with an Indian pilot. The pilot directed his attention to a spot, which he recognized as the same towards which the other guide had pointed the year before ; and he was now told that there was a very rich gold mine there. This was in 1596 ; and Keymis's report of this, so far as I can learn, was all that Raleigh ever knew of the matter. Now such evidence might be motive enough to an adventurous man for *seeking* a mine there ; but was it enough to make a man of Raleigh's experience so sure of finding it that he would stake reputation and fortune upon the issue ? It is true that he used language implying as much ; but in order to believe it one must take a new view of his understanding.

Let us suppose, however, that it was so. Let us sup-



pose that upon Keymis's report of what he heard from the Indians in 1596, Raleigh really felt sure of finding, with Keymis's help, in 1617, a very rich gold mine in a certain place, if he could only get far enough up the river; and let us see whether he took the measures which such a belief would naturally prompt. One such, according to his own account, he did take. He obtained from Keymis a description of the place: a description, it seems, so exact that "a blind man might find it by the marks set down."<sup>1</sup> But what did he do with it? Keymis might be killed or die on the way. He himself was not to be of the party. Is it conceivable that in an adventure upon the success of which everything dear to him depended, he would have sent a force up the Orinoco to find that particular spot, without a copy of this description of it,—for the use, in case of Keymis's death, of whoever might succeed him in the command? Yet I cannot hear that it was ever seen by anybody else, or that he himself had kept any note of it. He repeated over and over again his assertion that "such a mine there was, within three miles of S. Thome." The production of Keymis's description would have been more to the purpose than many assertions. Yet no such thing is heard of.

But this is not all. Keymis reached the place without accident, and with an escort strong enough to protect him against any force that might interfere. But he could not find any mine, and was obliged to return empty. The rest we learn from Raleigh himself. According to him, Keymis after his return continued to speak of the mine as if there were no doubt it was there, but pleaded in excuse for coming away without opening it that it would have cost too many lives (the woods being occupied by the dislodged Spaniards),—that they could not have held it for want of victuals,—that to discover it, without being able to work it and hold it themselves, would have been to dis-

<sup>1</sup> Raleigh's *Apology*.

cover it to the Spaniards, — and therefore that he thought it better to pretend to his own companies that he could not find it. “All which fancies,” proceeds Raleigh, “I rejected, and *before divers of the gentlemen* discovered his ignorance;” told him that he could have had no difficulty in finding the mine; that a hundred weight of the ore to show the King would have been well worth a hundred lives of such as remained of the land forces after his son’s death: and finally that he must leave him to make good his own excuse, for *he* could not justify it. This, it seems, was before company; and “with this Keymis seemed greatly discontented, and so continued divers days;” which was natural enough. He employed those days in writing a letter to the Earl of Arundel (who had been one of the patrons of the expedition), in which he excused himself by the same and other arguments for coming away as he did; brought it to Raleigh in his cabin; and “prayed him to allow of his apology.” Raleigh refused. “He had undone him by his obstinacy; he could not favor in any sort his former folly.”

“He then asked me whether that were my final resolution? I told him that it was. He then replied in these words: ‘I know then, Sir, what course to take.’”

The course which he took was to retire to his own cabin and put himself to death.

Now if we are to suppose that Keymis was conscious of nothing worse than failure, without any fault of his own, in a legitimate enterprise, — if he believed, what it seems he was prepared to maintain, that in giving up the search for the mine (which he still fully believed to be there) he had acted prudently, — I find it hard to understand how the discovery that Raleigh was of a different opinion should have driven him to that extremity. “The truth,” says Professor Napier, “would seem to be, that believing firmly in the existence of a mine in the neighborhood of St. Thomas, and being awakened by the

reproaches of his old commander to a full sense of the ruinous consequences of its non-discovery, he was prompted by a strong feeling of shame and grief, arising from the thought that he had too hastily abandoned the search, to destroy himself.”<sup>1</sup> I do not say that this is incredible; because the conditions of mental sanity are little understood, and it may be that the mortification of such a reception, added to the mortification of the failure itself, was enough to make a man mad. But I should find the case more intelligible if I might suppose that there had been a private understanding between Raleigh and Keymis about the mine — an understanding unwritten and possibly unspoken, but known to themselves — and that Keymis thought he was going to be thrown over. Such an understanding was by no means impossible. So well as they knew each other, and so quick as Raleigh’s apprehension was, it might easily have been managed without any words. They both believed in the mineral riches of the region. It was but to “know of” a particular mine. Keymis, for Raleigh’s sake, might easily pretend to know more than he really knew. Raleigh, for his own sake, might easily pretend to believe more than he really believed. In that case the disappointment would be, not that they found no mine, but that they found no riches, mineral or other. And if Keymis found or suspected that Raleigh meant to throw the whole blame upon him, pretending that he had been himself deceived, it would not be so strange if his vexation became tragical. It is not necessary to suppose that Raleigh intended to carry out the threat. He was not prepared for any tragical issue at the time; and he had to play before others the part of an offended and disappointed commander. Perhaps he played it a little too well. But his behavior to Keymis, as related by himself, requires explanation, and it seems that it presented some difficulty; for the evidence

<sup>1</sup> *Ed. Rev.*, Ap., 1840, p. 86.

varies considerably, and the Declaration avoids all mention of the catastrophe.

But further. If everything depended upon the discovery of the mine, and the discovery of the mine depended upon the accuracy of those two observations of Keymis and the truth of the Indian's report, is it not strange that the probabilities of success were not more canvassed during the voyage? In Raleigh's journal I do not think the mine is once alluded to. And in the letter from one of the Captains, which was written while preparations were making for the expedition up the river and in a spirit of sanguine expectation of unbounded success, — the letter which was published in 1618 under the title of "News of Sir Walter Raleigh," — there is not a word from which one would infer that the object of the expedition was the discovery of a mine. The writer evidently understood it to be the taking possession of an empire. The general had received, he says, from Sir Robert Dudley —

"A strong assurance that yet there remained, out of the hands of all the Kings and Princes in Christendom, in the south parts of America, the very magazine of all rich metals, and such an empire as whosoever shall have the fortune to conquer it shall so darken all the actions either of Cortez or Pescara, that nothing but poverty will appear in their deeds, neither Mexico nor Peru be worthy to be compared with it, and what Prince soever shall possess it shall be lord of more gold, of a more beautiful empire, and of more cities and people, than either the King of Spain or the great Turk. At this questionless our hopes promise that his noble ends do bend; for being full as great, and having been much greater than any man whatsoever of our nation that hath followed the like course, to what should his great heart look? or what should he dedicate to so gracious and merciful a King as he enjoyeth, but the very top and garland of all heroic actions?"

These, it seems, were the hopes with which he inspired his followers; and I cannot help thinking that he had much more faith in them himself than in finding a mine

of slate gold ore, a foot and a half below the surface of the ground, within three miles of S. Thome.

His proposal to the Lords of the Council in 1611 (by which he engaged — in case Keymis, after being guarded to the place, should fail to bring to England half a ton of slate gold ore, — to bear the whole charge of the expedition), is indeed regarded by Professor Napier (who first printed it) as “proving that he was ready to stake his fortune and liberty upon Keymis’s knowledge of the existence of a gold mine in the interior” of Guiana, and thereby settling the question as to the reality of his own belief in such a mine. I cannot think that it proves so much as that. It proves only that he was ready to stake a sum of money equal to the cost of the voyage — that is to the expenses *minus* the proceeds — upon the chance of Keymis being able to bring back half a ton of slate gold ore. Nor did he stake his liberty even upon that. He risked no liberty. If the adventure turned out well he was to have his liberty restored; if not, he was to continue as he was. And as to his fortune, he did not propose to risk it upon that hope more than he had been used to do without any such hope. It would not have been the first voyage that had been made at his charges; and even if no mine had been discovered, it might nevertheless have been a good one.

As a possible solution of some of the difficulties which meet us in endeavoring to find a consistent theory of his actions, I have sometimes suspected him of fancying that there was a private understanding between himself and the King, similar to that which I think there must really have been between him and Keymis; an understanding that his assurances with regard to the distance of the mine from all Spanish settlements were merely devices to enable the King to disclaim all knowledge of the fact;<sup>1</sup>

<sup>1</sup> It is sometimes said that the King must have known that Raleigh was going to invade a Spanish settlement, because the plan of the expedition, with the

that he was to bring back proofs of the riches of the region, getting them as he best could, and if it appeared to be worth holding the King was to claim it as his own by right of the cession to Elizabeth. Such an idea would account for several things not easily accounted for otherwise ; among the rest for his making it a matter of complaint that the plan of his voyage had been communicated to the Spanish Government,—a complaint which on any other supposition seems absurd. For if the King meant in good faith to allow no aggression upon Spanish territory, why should he not inform the Spanish government to what territory the armed force which he was sending out was bound ? And if the Spanish Government made use of the information only to strengthen their own defenses along the line of march,—which was all that Raleigh himself charged them with doing,—what had *he* to complain of ? If, however, we may suppose that he took the King for his accomplice in a treacherous attempt to take the Spaniards by surprise (and if his most admiring biographers are to be trusted, it would not have been the first time that he proposed this kind of secret arrangement with his sovereign),<sup>1</sup> the complaint

place where the mine was said to be, had been fully explained to him. But the question is, Where the town was supposed to be. Mr. Gardiner (vol. i., p. 53) had a long note upon this question, and comes to the conclusion that Raleigh “had no reason to believe that there was any Spanish settlement short of a spot at the mouth of the Coroni, several miles further on.” It seems that there was, or had been, a town there, called S. Thome, but that it had been removed to a place many leagues lower down the river. “But,” says Mr. Gardiner. “the whole of the evidence upon Raleigh’s voyage is unintelligible, unless it is admitted that he knew nothing of the change of site when he sailed from England in 1617.” The reasoning is not conclusive to me (see my note, p. 294) as far as *Raleigh’s* knowledge is concerned. It seems to me probable that before he left England he did know that there was a Spanish town near the place where he believed the mine to be. But I do not suppose that he told the King so. In laying the plan of his proposed voyage before the King, what should prevent him from leaving S. Thome where it formerly was, at the mouth of the Coroni, and placing the mine where Keymis went for it, many leagues below ? Though Raleigh was not likely to be ignorant of a matter so deeply concerning him, the King was not likely to know anything about it. Why should he ?

<sup>1</sup> The proposal made by Sir Humphrey Gilbert to Queen Elizabeth in 1577 —

(as from him) would be intelligible. That it should have been adopted and echoed by so many English writers of reputation, who do not suspect any such conspiracy, and that Hallam himself should be one of them,<sup>1</sup> remains a mystery upon any supposition; and one of which I cannot suggest any plausible explanation.

The popular judgment upon Raleigh's execution is more intelligible, though hardly more just. His offense was

which Mr. St. John believes to have been drawn up by Raleigh, then a youth of twenty-five — bears so strong a resemblance to this that his account of it is worth quoting. "The 'Discourse,' in the most debonnaire manner, takes it for granted that our government would entertain no scruple to take a leaf out of the book of the Jesuit, provided it could be enabled to shield itself from material ill consequences. . . . Without much preface, the writer enters upon his project, which is for her Majesty to fit out a fleet, ostensibly for discovery alone. It is to consist of a few ships, and those manned, armed, and victualled conformably to its object; but at a given latitude on the ocean, this harmless squadron is to fall in with a more formidable armament, equipped and sent out secretly, with a force of five or six thousand men on board. . . . The Spaniards, French, and Portuguese employed a large portion of their shipping in the fisheries of Newfoundland. On reaching the banks, it was customary for the crews to take to their boats, or go on shore to cure their fish, leaving a few hands on board rather as sentinels than as defenders. Knowing this, Raleigh's plan was to make a sudden dash at these unprotected vessels, take possession of them with their loadings, return to Europe, and dispose of the whole in the ports of Holland and Zealand. . . . With the funds thus obtained, Raleigh suggested that Gilbert and he might be empowered to fit out a larger fleet, with which he persuaded himself it would be practicable to conquer the Spanish possessions in America. . . . 'If your Highness will permit me, with my associates,' he says 'either openly or covertly to perform the said enterprise, then with the gains thereof there may easily be such a competent company transported to the West Indies as may be able not only to dispossess the Spaniards thereof, but also to possess your Majesty and the realm therewith.' . . . To throw dust into the eyes of Spain, Elizabeth was to affect much indignation at these adventurers, whom she was to disclaim and denounce as pirates, or describe as servants of the Prince of Orange. The admirals who countenanced or succored them were to be imprisoned, and generally everything was to be done which might screen the government from the charge of collusion with the infringers of the treaty." *St. John's Life of Sir Walter Raleigh*, vol. i., p. 22. If he had assumed that Elizabeth would approve of such a proceeding, and obtained from her a commission limited to purposes of peaceful discovery, — pretending, in order to keep her clear of all complicity, that his object was discovery alone, — the two enterprises would have been in all the main features identical.

<sup>1</sup> "There is even reason to suspect that he betrayed the secret of Raleigh's voyage to Gondomar, before he sailed." *Constitutional History*, vol. i., p. 484, note.

against Spain. The same feeling which a few months before had made a London mob demand, in the name of justice, that a Spaniard who had accidentally ridden over a child should be given up to them, and disposed a London magistracy to let a riotous attempt to break into the house and drag him out pass without inquiry,—this same feeling made the punishment of an Englishman, for merely pillaging and burning a Spanish town in South America, seem like an outrageous injustice. The unfortunate circumstance which forbade a formal trial and made it necessary (in the opinion of the highest legal authorities) to proceed under the existing sentence (which was for other matters) or not at all, was not easy for ordinary people to understand, and gave plausibility to the assertion that the punishment was inflicted upon a false pretense, and that the real motive was to give satisfaction to the Spaniards. Even those graver writers who can see that an offense had been committed which had no right to pass unpunished, have been unable to get over this circumstance. Lord Macaulay speaks of the execution as “an act which, *if done in a proper manner, might have been defensible* ; but which, under all the circumstances, must be considered a dastardly murder.”<sup>1</sup> “To such a pass had James brought himself,” says Mr. Gardiner. . . . “He had suffered himself to float down the stream . . . till it was impossible to *punish an offender* without perpetrating what can hardly be dignified with the title of a judicial murder.”<sup>2</sup> “Raleigh *might be amenable to punishment*,” says Hallam, “for the deception by which he had obtained a commission that ought never to have issued ; but the nation could not help seeing in his death the sacrifice of the bravest and most renowned of Englishmen to the vengeance of Spain.”<sup>3</sup> “Had Raleigh been pardoned when he was liberated,” says Pro-

<sup>1</sup> *Essay on Lord Bacon.*

<sup>2</sup> *P. Charles and the Sp. Mar.*, i., 182.

<sup>3</sup> *Const. Hist.*, i., p. 484.



fessor Napier, *he might have been brought to trial* in some competent form, and the law would have vindicated itself by maintaining *both the reality and the appearance of justice*. His execution upon the antiquated sentence is unquestionably one of the most revolting acts that stains the annals of British criminal procedure. It is so far consolatory to know that the indignation which it roused reduced even James, the great advocate of irresponsible kingship, to the necessity of appealing to his people in vindication of his conduct, and that his vindictory "Declaration," though aided by the pen of Lord Bacon, produced no favorable effects. A sentence of condemnation, founded upon the inborn and immutable feelings of the human heart, had gone forth against him; and it was rendered irreversible by the general belief that Raleigh's life was sacrificed to gratify the resentment and to appease the fears of the ancient enemy of his country."

As a description of what was generally felt about the case, I have no exception to take to these statements; but I cannot think they represent at all truly what the case was; and if the writers shared the feeling which they describe (as it seems they did), they must in my opinion have failed to distinguish the appearance from the reality. In what sense can the execution be called or likened to a murder? It was not against law. It was done publicly, with all judicial forms and sanctions, after careful investigation, upon grounds which were openly declared and avowed, and was thought by those who did it to be an act of justice. There is not the least reason to suppose that the administration of justice in the matter was in any way tampered with or deceived or over-swayed. It may be said that the verdict upon the old case was unjust, that the opinion of the legal authorities upon the new case was erroneous, that the advice of the council was bad when they agreed that the King might "with justice and honor give warrant for execution upon

the former attainder." It may be said that the execution was unjustifiable by law, by reason, or by humanity. But it cannot be said that it had any resemblance to anything that is meant by the word murder. Neither can it with any propriety be called "an execution upon the antiquated sentence," if by that be meant an execution on account of the old offense. It was perfectly well understood that the old offense had nothing to do with it. The old sentence happened to stand in the way of a trial for the new offense: the lawyers did not know how a man under attainder for treason could be legally punished at all except by using the power which the attainder had put into the King's hands. It may be said that this was a foolish scruple, or that it was bad law. But it was the real reason why Raleigh was not regularly tried for acts of hostility committed against persons who were in amity with England. And it was for such acts, not for treason, that he was executed. Nor can it be objected that the execution took him by surprise, and thereby offended against that principle of justice which forbids to punish without warning. He had been fully warned before he started that he held his life on sufferance, and that if he abused his commission the sufferance would be withdrawn. Nor was it withdrawn without full inquiry. Quite as much pains were taken to ascertain that he was guilty as would have been taken by way of preparation for an indictment in the ordinary form. Probably more. For he had the advantage of hearing the whole charge, with the evidence, set forth in order; and of giving his answers point by point. Nor again was there any room for doubt about the material facts. The question is only what punishment was due to the acts of which he was accused: there is no doubt that they had been committed. In the face of all this, to call it an "execution upon the antiquated sentence" seems to be a gross misrepresentation of the spirit of the whole transaction. Can it with

more justice be called a sacrifice to the vengeance of Spain? The offense was an offense against the law of nations, and Spain was the nation injured. "Offenses against the law of nations," says Blackstone, without any reference to the case of Raleigh, "can rarely be the object of the criminal law of any particular state. For offenses against this law are principally incident to whole states or nations: in which case recourse can only be had to war; which is an appeal to the God of hosts to punish such infractions of public faith as are committed by one independent people against another; neither state having any superior jurisdiction to resort to upon earth for justice. But where the individuals of any state violate this general law, it is then the interest as well as the duty of the government under which they live to animadvert upon them with a becoming severity, that the peace of the world may be maintained. For in vain would nations in their collective capacity observe these universal rules, if private subjects were at liberty to break them at their own discretion, and involve the two states in a war. *It is therefore incumbent upon the nation injured, first to demand satisfaction and justice to be done on the offender by the state to which he belongs; and if that be refused or neglected, the sovereign then avows himself an accomplice or abettor of his subject's crime, and draws upon his community the calamity of foreign war.*"<sup>1</sup> If this be admitted for sound doctrine, we have only to substitute the particular for the general case, and we shall find that it was incumbent on Spain to demand satisfaction and justice to be done on Raleigh by England; that a refusal or neglect to comply with the demand would have been an avowal by the King of England that he was an accomplice and abettor; and that if a war followed he would be responsible for it. And this, as far as I can see, was precisely the view James took of the case, and upon which he con-

<sup>1</sup> *Commentaries*, Book iv., c. 5.

sistently, openly, and honestly acted throughout ; knowing well enough that he was making a sacrifice, but believing that it was a sacrifice which justice demanded of him. For this is surely the true and natural interpretation of that letter which has so often been quoted as containing an admission of the contrary. “The justness of that belief,” proceeds Professor Napier, — meaning the belief that Raleigh’s life was sacrificed to gratify the resentment and appease the fears of Spain, — “is placed beyond all question by a despatch written upon the occasion to the British ambassador in Spain. . . . ‘Let them know,’ says this despatch, how able a man Sir Walter Raleigh was to have done his Majesty service, if he should have been pleased to employ him ; *yet to give them content he hath not spared him, when by preserving him he might have given great satisfaction to his subjects*, and had at his command as useful a man as served any prince in Christendom.’ ”<sup>1</sup> The same passage had been previously quoted by Jardine with the following comment : —

“The abominable injustice of executing a man for political purposes was not without many parallels in the reigns of his predecessors ; but the singular and peculiar baseness of prostituting the law of England to the will of a foreign power, of delivering the sword of English justice into the hand of the King of Spain, to enable him to wreak his vengeance on an English subject, and destroy one of the most distinguished men of the age, was reserved for a monarch so mean and pusillanimous as James the First.”<sup>2</sup>

I give these comments entire, that they may be compared with the general doctrine of public wrongs above quoted. It will be seen that Mr. Jardine’s censure applies to the course of proceeding prescribed by Blackstone in the general case, quite as exactly as to the proceeding pursued by James in this particular case. But an analogous case on a smaller scale, having the sanction

<sup>1</sup> *Edin. Rev.*, Ap., 1840, p. 94.

<sup>2</sup> *Criminal Trials*, i., p. 520.

of a man who cannot be suspected of a disposition to prostrate England to Spain, will perhaps be more easily understood, and will help us to a juster judgment.

When Raleigh touched at Gomera on his way to Guiana, and his ships, being mistaken for Turkish pirates, were shot at, he took measures to satisfy the Governor that they were Christians and wanted nothing but water. The Governor replied that in that case "he would willingly afford as much as they were pleased to take, if he might be assured they would not attempt the town and spoil it, with the churches and other religious houses, nor destroy the gardens nor fruits."

"I returned him my answer that I would give him my faith and the word of the King of Great Britain, my sovereign Lord, that the people of the town and island should not lose so much as one grape; and if any of my company did take from them, were it but an orange or grape, without paying for it, I would make him an example to the rest and hang him up in the market-place."

So far Raleigh's position towards the Spanish Governor was exactly analogous to that of James towards the Spanish Government. James had in like manner given his faith to the Spanish Government that Raleigh should not take from them any of their property; and that if he did, he should be either beheaded in England or given up with all his spoils to Spain. And if the parallel ends there, it is only because none of Raleigh's company dared to incur the penalty. But suppose one of them had taken something without paying for it, and Raleigh had been as good as his word,—had made him an example and hung him up in the market-place: in what respect would his position, with regard to that man, have been different from the King's position with regard to himself? He would have executed an Englishman for an offense committed against Spaniards. To give content to a Spanish governor, he would have sacrificed a man, whose preser-

vation (I will answer for it) would have given great satisfaction to his company. Would he have been delivering the sword of English Justice into the hands of the governor of Gomera, and committing a dastardly murder?

State the facts simply, and it will be seen that in both cases there is a sacrifice, but it is made to the demands of Justice. Raleigh had been guilty of a gross outrage; for which (against whomsoever committed) punishment was due. The outrage had been committed against Spain; and since the prosecution of injuries is naturally regarded as belonging more especially to the party injured, Spain (in that character) demands justice; not injustice, but justice. King James admits that the demand cannot be justly refused, though he is sensible that it will cost him much to comply. He must lose one of his ablest subjects, and incur great odium from the rest. Still the Spaniards have a right to demand the sacrifice, and accordingly it is made. To give them content, he does not spare him, though by preserving him he might give great satisfaction to his subjects. Invert the case and it will be seen that it was but doing as we would be done by. Suppose some Spanish adventurer, abusing a commission from the King of Spain, had landed in Virginia, attacked, pillaged, and burned down one of our settlements there; killed the governor, dispersed the inhabitants, carried off papers, goods, and treasure. Would not our ambassador have been ordered to demand the punishment of that man? Would not the Spanish Government have been bound to comply? Should we not have been justified, if they refused, in going to war upon that quarrel? Still, if they had complied (especially if at the cost of unpopularity and discontent), it would no doubt have been for our sake, not for their own — in justice to us, not themselves — that they would have done it. And Raleigh in like manner, if he had had to hang

an orange stealer in the market-place of Gomera, would have done it, not to please himself and his company, but in justice to the owner of the orange.

But the truth is that the real justification of the punishment in all these cases is not the satisfaction of this party or that, but the necessity of preventing breaches of faith between nations—that faith without which there cannot be either peaceful commerce or interchange of offices of humanity. Why could not Raleigh approach Gomera for the purpose of taking in water, without an exchange of cannon-shot? Because they could not trust him not to sack the town if he landed. If his own proceedings on the Orinoco had been allowed and upheld, no armed English ship could have been trusted within reach of any Spanish town, and peaceful commerce would have been at an end. Indeed the very excuse which is set up for him—namely, that “no peace beyond the line” was the creed in which he had been brought up—is the best justification of the severity. No one could be brought up in that creed afterwards. No one could either deceive himself or offer to defend another by pretending that excuse for an act of unprovoked and unannounced hostility, and the pillage and ruin, without warning and without conditions, of a peaceful and unoffending community.

Though the popular dissatisfaction with the execution of Raleigh was no doubt very general at the time; and though the remembrance of it afterwards, as the unpopular negotiations with Spain went on but did not prosper, helped materially to untune the relations between the government and the nation; it was not immediately followed by any threatening demonstrations of discontent: and Bacon seems to have thought that the only serious danger which then threatened the crown was the condition of the finances. Under this impression he had selected as the fittest New Year’s gift for the King on this occasion an account of his revenue. I

have not succeeded in finding any treatise answering the description : and as it was still only an intention, it may perhaps have remained in that state and not grown into anything better. That he should not have been able to have it ready at the exact time when it might be used to serve and dignify the office of a new year's compliment, is easy to understand. But it was an intention at any rate sufficiently mature to be formally announced to the King himself, and the letter in which he announced it, still extant in his own hand, is here printed from the original in the Bodleian Library.

#### TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY,—  
I do many times with gladness and for a remedy of my other labors, revolve in my mind the great happiness which God (of his singular goodness) hath accumulated upon your Majesty every way ; and how complete the same would be, if the state of your means were once rectified, and well ordered. Your People militar and obedient ; fit for war, used to peace. Your Church illightened with good preachers, as an heaven of stars. Your Judges learned, and learning from you ; just, and just by your example. Your Nobility in a right distance between crown and people ; no oppressors of the people, no overshadowers of the crown. Your Council full of tribute of care, faith, and freedom. Your gentlemen and justices of peace willing to apply your royal mandates to the nature of their several countries, but ready to obey. Your servants in awe of your wisdom, in hope of your goodness. The fields growing every day by the improvement and recovery of grounds, from the desert to the garden. The city grown from wood to brick. Your sea-walls or *pomœrium* of your island, surveyed and in edifying. Your merchants embracing the whole compass of the world, east, west, north, and south. The times



give you peace, and yet offer you opportunities of action abroad. And lastly, your excellent royal issue entaileth these blessings and favors of God to descend to all posterity.

It resteth therefore that God having done so great things for your Majesty and you for others, you would do so much for yourself, as to go through (according to your beginnings) with the rectifying and settling of your estate of means, which only is wanting. *Hoc rebus defuit unum.*

I therefore, whom only love and duty to your Majesty and royal line hath made a financier, do intend to present unto your Majesty a perfect book of your estate, like a prospective glass, to draw your estate nearer to your sight; beseeching your Majesty to conceive, that if I have not attained to do that that I would do in this which is not proper for me, nor in my element, I shall make your Majesty amends in some other things in which I am better bred. God ever preserve and prosper your M.

Your Ms. servant  
most humble obliged and devoted

FR. VERULAM.

2 Januar. 1618.

## BOOK VII.



### CHAPTER I.

A. D. 1619-1620. JANUARY-JUNE. ÆTAT. 59.

THE QUEEN, who had been suffering from dropsy since the beginning of the year, died on the 2d of March. On the 19th the King himself was seized on his way from Newmarket to Royston with a sudden illness, so severe that the Prince was sent for, and most of the Court Lords followed. It was a violent fit of the stone, and, though he got through it, he was slow in recovering his proper health; and the alarm continued long enough to test the feeling of the people. "I am glad," says Chamberlain, writing on the 27th of March, "to see the world so tenderly affected towards him; for I assure you all men apprehend what a loss we should have if God should take him from us, and do earnestly inquire and in general heartily wish and pray for his welfare." And again, on the 10th of April, he writes that the King "hath continued weak and had divers accidents that gave a general apprehension of danger, and though he bare it with unusual patience, yet it seems he was not so confident of himself but that he prepared to settle things as if he were to leave all; and to that end made an excellent speech to the Prince before all the Lords there present; recommending divers of them to him by name for divers good parts and services, — as the Duke, the Lord Chamberlain, the Earl of Arundel, the Lord Fenton, the Lord Haddington, but specially the Marquis Buckingham and Ham-

ilton. The Lord Digby he only excused as having undergone a great deal of envy for doing that he expressly commanded him, saying he was an able man and fit to do service. Further he gave him charge of Religion, and of respecting the Bishops, — as grave and wise men and best companions for princes." He was so much better, however, by the 11th, that the Bishop of London preached at Paul's Cross, before the greatest audience that Chamberlain remembered to have seen, — almost all the Council and great men about town being present, — a thanksgiving sermon for his recovery.<sup>1</sup> It appeared that there had been little or no hope left, and that the physicians themselves were of that opinion. And a week later he reports that "his sickness was more than vomiting and looseness, which were accompanied with a plain fever and divers strange accidents of inequality, intermission and failing of his pulse, with vehement singultus, and other dangerous and deadly signs and symptoms, which you may the better conceive by his slow recovery; being yet very feeble, though he have no manner of affection either of stone or gout."

It was remarked about the same time that Bacon was slack in attendance upon his public duties. On the first Star Chamber day in Easter term "he came late into the Hall, and staid not long." On the 11th of April "he was not at Paul's Cross with the rest of the Council." On the 16th he did not appear at all at the Star Cham-

<sup>1</sup> *S. P.*, vol. cvii., No. 51. Camden's note of the sermon is worth quoting for the benefit of those who wish to know what was thought at the time. "*Episcopus Londinensis ad Crucem Paulinam concionatus, gratias Deo agit de restaurata Regis valetudine, quem meritis laudibus celebravit, et imprimis ob justitiam æquabiliter singulis administratam. Dixerat enim Rex in Camerâ Stellatâ, etsi reliquis humanæ fragilitatis vitiis laboraret, se tamen justitiam sincere coluisse; nec esse cur veniam injustitiæ apud Deum deprecaretur.*" *Annal. Apparat.* That James should confess himself subject to human frailty at all, sounds strange to posterity, who have been taught to believe him incapable of such knowledge. That the one human frailty of which he thought nobody could accuse him was partiality in the administration of justice, will probably sound stranger still. But contemporaries do not seem to have found anything strange in it.

ber, so that there was no court. "Which is thought," Chamberlain adds, "rather to proceed of tenderness than of any real indisposition or infirmity." On the 24th he writes again: "The Lord Chancellor's slackness (caused by the delicateness of his constitution) hath raised a rumor as if he were like enough to have a Lord Keeper for his coadjutor, or rather to have the place executed by commission when his health will not suffer him to follow it. But to disperse such mists, he is gone this day to Theobald's to see and congratulate his Majesty's happy recovery." To the same effect another of Carleton's correspondents writes on the 8th of May: —

"Your Lordship may perhaps have heard that the Lord Chancellor was like to have some assistance put upon him: but there is no such thing: and he is now in as much favor at Court as ever, if not more."

The truth, I believe, was that he had had a more serious illness than anybody supposed. In the beginning of March we learn from Chamberlain that he had a severe fit of the stone, "which held him in great pain two or three days." But his illness appears to have lasted a good deal longer. The expression in a letter to Toby Matthew, written about two years after, — "when once my master, and afterwards myself, were both of us in extremity of sickness (which was no time to dissemble), I never had so great pledges and certainties of his love and favor," — can hardly refer to any other time than this. And in the manuscript copy of another letter of still later date, I find a line crossed out in which he had spoken of it as the time of his "great sickness."

The next letter, though only one of compliment, serves to remind us that the summer of 1619 was a critical time for Europe; and to introduce a remarkable paper of Bacon's which has hitherto escaped notice, but which is important as indicating the policy which in this crisis he

would himself apparently have recommended England to pursue.

We have seen that in the beginning of March, 1616-17, he had concurred as one of the select councillors to whom the question of proceeding or not proceeding with the treaty for a marriage between the Prince of Wales and the Infanta of Spain was then referred, in a recommendation to proceed with the treaty, — as an enterprise which promised advantages either in case of success or failure. If it were carried out on fair conditions, it would be a valuable alliance; if it broke, the breach would probably be upon some material point of religion, and such a breach would strengthen the government, both with subjects at home and with the Protestant powers abroad. The resolution finally taken by the King appears to have been in accordance with that recommendation, and to have been framed cautiously, with a view to either event. Digby was appointed to negotiate a treaty upon the basis of the articles, as last agreed upon; according to which a general promise of connivance and leniency in the administration of the penal laws against the Catholics was all that Spain demanded in the way of toleration. Upon this basis he was commissioned to treat and conclude, if he found the symptoms favorable; but not otherwise: and with reservation in any case of the point of religion, on which nothing was to be finally concluded until it had been submitted to the King and expressly approved. But the concession which the Spaniards had made or professed to make on the point of religion had already served its purpose: it had encouraged James to renew the negotiation for the marriage, and thereby detached him from an alliance with France; and they were now free to withdraw it again. When Digby arrived in Spain in September, 1617, he found them as liberal and easy as possible with regard to the marriage portion and other temporal articles; but upon the religious point they could

not now be satisfied with less than an engagement to *repeal* the statutes relating to the Catholics. This was a different thing: and accordingly, pleading want of commission to treat upon that point, and having arranged to his satisfaction what else he had in charge, he came home. James, knowing this to be an engagement beyond his power to fulfil, declined to entertain the proposal. This was in May, 1618. And thus it would seem that the case had already occurred which the select councillors had anticipated: the negotiation was about to break upon a material point of religion; and if their advice had again been taken at this juncture, I can hardly doubt that they would have advised the King to take advantage of the occasion to break it off at once. It would certainly have been the best course to take, and would have left the government in a better position, both at home and abroad, than it was before. But for this James was not quite prepared, and I have some reason to think that he expressly abstained from consulting the councillors on that point, as knowing what their advice would be, and hoping to be able to bring the matter into a better shape himself.<sup>1</sup> But however this may be, the treaty was not

<sup>1</sup> I infer this, though somewhat doubtfully, from a passage in the *Narrative of the Spanish Treaty*, by Francisco de Jesus; edited and translated by Mr. Gardiner for the Camden Society, 1869. On the 27th of May, he says that the King asked Gondomar to have an interview with the commissioners, "in order to hear from them their approbation of the twenty articles and of the five which had been added, and which Sir John Digby had brought with him from Madrid; but asking him to say nothing to them about the principal point of religion and the liberty of the Catholics, because the King wished to treat of that privately with his Catholic Majesty, and to see if they could come to an agreement" (p. 147). He adds indeed that Gondomar did not feel justified in listening to anything about the articles "without adding that the principal matter which had to be arranged and secured was the general point, since in no other manner could either his Majesty [the King of Spain] agree to the marriage, or the Pope dispense: and he therefore spoke in this manner at the meeting which took place between himself and the aforesaid commissioners; and they declared that they would on their part help to facilitate and bring about this liberty of conscience." But if any one is disposed to infer from this that they did not at that time advise the breaking off of the treaty upon that "principal point of religion," I would remind him that this was only what they said to Gondomar, —

formally broken off at this time, and though it was not proceeded with, the friendly relations between England and Spain were not in any way disturbed. The Catholics were treated favorably. Imprisoned priests were set at liberty. The strictest justice—or what James believed to be justice—was enforced with regard to all Spanish complaints, even when (as in the case of Sir Walter Raleigh) it brought him into dangerous opposition to the current of popular feeling. He still wished for the Spanish alliance; but if the marriage treaty could not proceed unless he promised more than he could perform it must stop. And it stopped accordingly, until a new alarm from another quarter induced the Spaniards to start it once more, and to give it room to move by retreating for a while from the position which they had taken up.

This new alarm came from the revolution in Bohemia, which was indeed the beginning of the 'Thirty Years' War,—a war which the greatness of Spain was not destined to survive. In the summer of 1618 the Protestant aristocracy of Bohemia, upon some dispute about the suppression of Protestant churches on the ecclesiastical lands which was held to be a breach of charter, rose against the government, broke in upon the Board of Regency as they sate in council in an upper chamber, threw three of the ministers out of the window, established a Directorate of thirty members, and appealed to all the Protestant powers of Europe for support. It was a movement which could not be confined within the limits of the country. The Emperor of Germany was King of Bohemia, and his cousin Ferdinand of Styria was heir elect. Germany, therefore, with all its discordant elements,—its Jesuits, Calvinists, and Lutherans, its Catholic League and Prot-

or rather what Francisco says that Gondomar told him they said; and that if they thought it expedient for the King to take this occasion of breaking off the treaty and found him unprepared to follow their advice, it was certainly not to Gondomar that they would confide their views. It was not for them to break off the treaty. All they had to do was to give him a civil answer.

estant Union, its weak head and unmanageable members,—was an immediate party to the quarrel. The sympathies of Spain were with the Emperor, and her policy urged her to take his part and assist in crushing the Bohemian rebellion. But her finances were not in condition for a great war, unless England could be kept out of it; and the commanding position on the Protestant side which the crisis placed within England's reach was a temptation which something must be done to counteract. Mr. Gardiner has given us the substance of a report submitted by Gondomar and Aliaza to the Spanish Government on the 13th of January (O. S.), 1618-19, which will best show the view *they* took of the relation between Spain and England at this juncture.

"In spite," said Gondomar, "of the success which had attended his efforts to keep James out of the hands of the war party, it was impossible to be free from anxiety for the future. It was true that the King's exchequer was empty; but the nation was rich, and a declaration of war with Spain would immediately be followed by a large grant of money. In a few days a powerful fleet could be manned and equipped. On the other hand, at no time had the Spanish navy been so entirely unprepared for war. The sea would swarm with English privateers, and whoever was master at sea would soon be master on land. The Dutch rebels, the French Huguenots, and the German heretics would place James at the head of a powerful confederacy, and it was impossible to say what injury he might not inflict upon the Catholic church and the Spanish monarchy.

"At any price, then, the friendship of James must be secured. With that, everything would be possible, even the reduction of England to the Catholic church. The marriage treaty must again be set on foot." <sup>1</sup>

Such being the opportunity of England according to the best Spanish opinions (and Gondomar was a much better judge of her position among foreign nations than of her domestic conditions, which he could never under-

<sup>1</sup> Gardiner, vol. i., p. 270.



stand), it would have been strange if among her own councillors there were none who, taking the same view of the situation, were for pressing the advantage, and pursuing in the interest of England the very policy from which Gondomar in the interest of Spain had taken so much pains to divert her. Of what may have passed at the Council Table with regard to that question we have no record. The news-writers of the time were not informed, and we know little more of the matter than what we gather from the King's own letters explaining his own views. I have no evidence that the question was formally referred to the Council at this time. But this paper of Bacon's has very much the appearance of an argument prepared for a consultation either at the Board or at a meeting of the commissioners; and even if he had no opportunity of using it, — which is very likely, for the King was not prone to seek advice when his own mind was made up and he wanted no help, — it does not the less prove what his personal opinion was. It has no date: but it contains an evident allusion to a circumstance which happened about the middle of March, 1618-1619, and as it takes no notice of any of the great events which came so thick in the following summer and autumn, we may probably conclude that it was not written much later. There must have been many occasions to remind Bacon of the importance of the question, and to make it probable that a decision upon it might at any time be required. For the proceedings of Spain had been a matter of curiosity and anxiety all that spring, and the question among the outside politicians was only whom she was preparing to attack.

“The alarm of the Spanish preparation,” says Chamberlain, writing on the 30th of January, “sounds loud here at least and ministers much matter of discourse. Most men doubt they have a meaning to Ireland; the rather for that they have entertained many Scottish and Irish pilots; and that the Earl of Argyle

and Tyrone's son are said to be gone for Spain. We talk of order taken for twenty ships to be made ready, half of the King's, the rest merchants, the best that can be had. Though we cannot be persuaded that he hath any intent hitherward, yet it is not good to stand to his courtesy. For my part, by all that I can gather, I should rather think he hath a mind to the Venetians; or to land his forces thereupon and go for Austria or Bohemia."

A letter from Toby Matthew to Bacon about Spanish affairs, docketed 14 February, 1619, — which must mean 1618–19, — and written from Brussels, gives similar news, though with a different interpretation.

"In Spain there are very extraordinary preparations for a great Armada. Here is lately in this court a current speech as that the enterprise (whatsoever it should have been) is laid wholly aside; but that were strange; yet this is certain, that the forces of men (to the number of almost two thousand) which were to have gone into Spain from hence, are discharged, together with some munition, which was also upon the point of being sent. Another thing is also certain, that both in the Court of Spain and this there is at this time a strange straitness of money; which I do not conceive, for my part, to proceed so much from want, as design to employ it. The rendezvous where the forces were to meet was at Malaga within the Straits, which makes the enterprise upon Algiers most likely to be intended. For I take that to be a wild conceit, which thinks of going by the Adriatic, *per far in un viaggio duoi servitii*, as the giving a blow to Venice, and the landing of forces in aid of the King of Bohemia, about Trieste.

"Perhaps the King of Spain would be glad to let the world see that now he is *hors de paye*, and by showing himself in some action to entitle the Duke of Lerma to all his former sloth; or perhaps he now makes a great preparation, upon the pretense of some enterprise that he will let fall, that so he may with the less noise assemble great forces some other year for some attempt not spoken of now."

Whatever his intentions had been, they were diverted

by the measures taken to wait upon and meet them ; and the news of the 16th of March was that "all preparations for war were certainly laid aside for the year." But the death of the Emperor Matthias on the 10th opened new questions ; and we have evidence that towards the end of April our relations with Spain were in some shape or other under consideration of the Council. "The last week," writes Lorkin on the 26th of April, "all such as had received letters out of Spain were by particular summonses commanded to bring the same to the Council Table, there to be perused. I cannot understand the true cause ; but I conjecture it may be to discover by the several advertisements from all parts whether the King of Spain resumes again his former designs of raising forces now upon the fresh news of the Emperor's death." In the mean time the Elector Palatine was in active correspondence with his father-in-law, and with all persons who were likely to have influence with him, hoping to engage England in the cause of the Bohemian revolution, and obtain aid of money and men. One of his projects was to get the Duke of Savoy made Emperor, and it was about this time that he sent De Plessen, one of his principal councillors, to England, in order to engage James in the support of it. It was probably by the hands of De Plessen that Bacon received a letter from him, the purport of which we do not know, but which most likely related to the same business ; and though Bacon in his answer confined himself of course to general expressions of sympathy and good-will, yet as assistance to the Bohemian Protestants in any shape would necessarily lead to a breach of friendly relations with Spain, and as this was the crisis when the decision should be taken if it was to be taken at all, nothing seems more natural than that he should turn his thoughts to a serious consideration of the case, as a matter of policy, and set down a note of his conclusions. For the drawing up therefore of a short

statement of the balance of forces between Great Britain and Spain I find no time more probable than this. His conclusion, it will be seen, is substantially the same as Gondomar's.

His reply to the Count Palatine is called a "minute," — meaning, I suppose, that it was written to dictation, for otherwise it would have been called a copy, — and is in Meautys's hand.

#### TO THE COUNT PALATINE OF THE RHINE.

MONSEIGNEUR, — Je me tiens a grand honneur, qu'il plaise à vostre altesse de me cognoistre pour tel que je suis, ou pour le moins voudrois éstre, envers vous et vostre service; et m'estimeray heureux si par mes conseils aupres du Roy, ou autre devoir, je pourroy contribuer à vostre grandeur, dont il semble que Dieu vous a basti de belles occasions; ayant en contemplation vostre tres-illustre personne, non seulement comme tres-cher allié de mon maistre, mais aussi comme le meilleur appui, apres les Roys de Grand Bretagne, de la plus saine partie de la Chrestieneté.

Je ne puis aussi passer sous silence la grande raison, que vostre Altesse fait a vostre propre honneur; en choisissant tels Conseillers et Ministres d'Estat, comme se montre tres-bien estre Monsieur le Baron de Dhona et Monsieur de Plessen, estants personages si graves, discrettes et habiles; en quoy vostre jugement reluict aussi. Vostre Altesse de vostre grace excusera le faulte de mon langage François, ayant esté tant versé es vielles Loix de Normandie; mais le coeur supplera la plume, en priant Dieu de vous tenir en sa digne et sainte garde.

Monseigneur,

De vostre altesse la plus humble  
et plus affectionné serviteur.

The paper on the comparative resources of Great Brit-

ain and Spain which I suppose to have been drawn up about this time, — earlier, I should think, rather than later, — is taken from a manuscript now in the British Museum, which seems formerly to have belonged to the collections used by Dr. Rawley for the “Resuscitatio;” being in a hand in which a large portion of them is transcribed. On the cover is written, I think in the same hand, “A short view of Great Brittain and Spayne;” and below (whether in the same hand or not, I am doubtful) “by Sir Francis Bacon.” Whoever inserted the name was no doubt right. The lower corner of the leaves has been damaged and worn away by damp, but the last words are supplied from other copies, of which there are two or three in existence, though none that I have met with of high enough authority to make a complete collation worth while.

A SHORT VIEW TO BE TAKEN OF GREAT BRITAIN AND  
SPAIN.

His Majesty now of England is of more power than any of his predecessors.

1. Because touching our addition of dominions, Ireland is reduced into a more absolute state of obedience and increase of revenue than heretofore. The footing we had in France was rather a greatness of trouble unto us than of strength: It was always in division: it held us in a continual flux of treasure and blood: we never attempted it in front but it<sup>1</sup> attempted us in the rear; which did both distract our armies and aggravate the charge. It is a territory so separated from us by nature as we could not advance upon it either for offense or relief without the excess of difficulty and charge that a State must undergo when it runs the necessity of such an undertaking by sea, where the war was bent upon a great continent, a populous nation, a plentiful country, entire in itself,

<sup>1</sup> *that* in both MSS.

and that can be succored without passing the seas. In these things we found such disadvantages as have been the undoing of our expeditions. Instead of the departure from this broken dominion we had in France his Majesty hath brought another whole kingdom to England; undivided from us either in amity or seat; from whence we have these benefits. The back-door that was open in the assistance of our enemies, both to offend us and to divert our attempts from them, is now open to us, and his Majesty hath the key of it. It saves us the money and the men that we were forced to employ in a second army for the withstanding the invasion of that side, and not saves us it only, but renders it to bestow in undertakings of profit which we were wont to spend upon defenses of loss. We have another valiant nation to assist us, whose service in the Low Country wars hath often and always given us this testimony of their affection and faithfulness even in Queen Elizabeth's time, that in every national quarrel between us and others, which hath many times happened between the French and us, they have voluntarily and bravely sided with us, making that danger common both to themselves and us which was drawn out but particularly against the English. The joining of Scotland hath made us an entire island, which by nature is the best fortification and the most capable of all the advantages of strength that can by art be added unto nature; whereby we may be able at one and the same time both to undertake any action abroad and defend ourselves at home without either much danger or great cost.

2. By reason his Majesty hath the neighborhood of the powerfulest nation at the sea that now is in the world, at his devotion; a people by nature more worthy our credit than any other; the use of whose neighborhood our own histories will commend unto us, if we inquire of the ages past, even then when they wanted that power

and that knowledge in their industry which they now have as well in matter of peace as war: the memory of those times will tell us that we seldom undertook any great thing without them; insomuch as our loss of France may probably in part be imputed to the breach we suffered in their friendship. And though they were then of the same religion with England, as likewise now they are, yet the present condition that we do both of us stand in for points of religion doth place us in an estate of better assurance with them than the condition of those times did. For then, considering there was no main national separation in the Church, religion was but a common bond upon them and inclined them to no particular side; where now it hath the motive in it to make defense with us against an opposite Church in such a nation as hath drawn both of us into one and the same cause in quarrel as well of policy as religion. And lastly, their army is the best military school in the world; from whence our land-services may at least be sufficiently appointed with officers.

Now for the hearts of our people and wealth of our kingdom, though (it may be) some of your Majesty's ill-affected subjects could be willing we should distrust our own strength, when we receive these two points into our consideration; yet for the first, the occasion whereof they have derived from our difference in religion, I may say the wrath of God hath been so evident against them in the confusion of their plots, as methinks it should be an horror to them to think of attempting any further that way. For those of them that have made a covenant with blood, we stand not so either in need or fear of their numbers, but we may both spare them and suppress them. And far be it from me to think that many even of those that hold no communion with us in the Church should give other nations the cause to say that in England are the false men that take up God's weapon against

him and their own weapons against themselves, in the favor of a foreign ambition, that makes the pretense of religion but a port-hole to lay his artillery out at, or his scaling-ladder to assault by.

Now to the second point touching the wealth of the kingdom, if I did call the Council of Spain itself to give judgment in the cause, I should need no better sentence to condemn their opinions that think the King of Great Britain poor. Their master knows well enough he shall find it otherwise whensoever he shall undertake to attempt us, or we them.

Now for Spain, his Majesty there, though accounted the greatest monarch of Christendom, yet if his estate be inquired through, his root will be found a great deal too narrow for his tops. His dominions are so far in distance asunder, as they cannot give relief time enough one to another upon an alarm; which is the reason he is more powerful to assault than to defend; and therefore are compelled to have continual garrisons of that charge which he is unable to maintain. He hath more to do with shipping than any other prince, yet hath few seamen at his devotion, but by extreme charge; and those of the worst sort. His poverty heretofore hath appeared in the mutinies of the Low Countries' armies for want of pay; which was a great cause of his ill success there. And I cannot see how his estate should be much better now than it was, for though it be true that his charge is somewhat less, yet it is true that his subsidies in Spain are diminished, as well in respect of insupportableness as indisposition, and his returns out of the Indies decay; and indeed but for the Indies he were the poorest King of Europe.

Now it serves the better for the finding of his weakness or strength, to inquire whether he be able to stand upon terms of defiance and yet hold the Indies? I think



not. His Majesty of England joining with the States of the United Provinces is of power to raise two Armadas, the one to block up Spain, the other to block up the Indies. The least success that may be hoped for out of this enterprise, the cutting off his returns, would beggar him. The fear of this project was the thing that stopped his greatness to the United Provinces, when he departed with his pretense of sovereignty to them; and that fear is an ague he is not yet cured of. This is a right design and a great one: such an one as I wish we had all the treasures and all the valiant blood of our ancestors to bestow upon, for the expense whereof we have nothing to show now but the two poor islands of Jersey and Guernsey. And to say truth in that case, if all the lands that belong to the Crown of England were offered to his Majesty, I should not give my advice to receive them, much less to conquer them.

Now for the disposition of the Low Country men, I assure myself there cannot be a thing more desired than they desire to join with his Majesty in any undertakings, especially in this. For they are sorry they understood so little the King of Spain's weakness in Queen Elizabeth's time, when her Majesty so affected their joining with her, and that now they know that his Majesty being greater in power will yet suffer such an enemy to all Christian princes, chiefly to those of his Majesty's religion, to creep into his bosom; for all the greatness he hath he holds by courtesy of his Majesty, and to that end courts him: he knows he were undone else.

To conclude withal, I will infer some of the reasons that persuade to the undertaking of that design.

The policy of Spain hath trodden more bloody steps than any state of Christendom. Look into the treaties and the negotiations of his ministers abroad. You shall find as much falsehood in these as blood in the other. He never paid debt so truly as to those he employed

in the corrupting of the ministers of other princes. He holds league with none but to have the nearer access to do harm by; and a match in kindred shall not hinder it when he intends his advantage once. He disturbs all Christendom with his yearly alarums and armadas, and yet doth less hurt to Infidels and Pirates than any; unless it be to get wherewithal to arm himself against other Christian princes. And he hath an ambition to the whole empire of Christendom. These are motives wherein all Christian princes are interested, so as with reason they cannot oppose the design: nor will, I think, the most of them; he hath derived himself into such an hatred with them.

Let us now betwixt his Majesty and the United Provinces consider how the particular causes of both nations do importune us both to the undertaking thereof. Who hath been so thirsty of our blood as Spain? and who hath spilled so much of it as he? and who hath been so long our enemy? and who hath corrupted so many of our nation as Spain? and that with help of the gold which, by reason of the neglect of this design, he doth still enjoy, to attempt our weak ones and our false ones withal. Would you find a traitor of a sudden? Balaam's ass will tell you where; at the Spanish ambassador's door.<sup>1</sup> And

<sup>1</sup> This is the passage which dates the composition of this paper. Lorkin, writing on the 16th of March, 1618-9, to Sir Thomas Puckering, tells the story. "I remember when you were in Spain, I advertised you of a scandalous, libellous book entitled *Balaam's ass*, that was let fall in the gallery at Whitehall, bearing an inscription to the King. One Cotton they suspected, and upon presumption committed to the Tower, where he hath lain ever since. Not many days ago the true author was discovered in a strange fashion. A hungry pursuivant, wanting money and desirous to put himself into some means by work, waited at the Spanish secretary's door, to see if he could light upon a prey. At length came forth one Williams, unknown to him but carrying in his conceit the countenance of a priest. This man he follows, dogging him to his inn." He then relates how *Balaam's ass* with new annotations was discovered upon him, and how he confessed himself the author. *Court and Times of James I.*, vol. ii., p. 146. The allusion proves conclusively that the paper was not written *before* the thing happened; and makes it probable that it was not written long after. Such a circumstance would hardly be so referred to, except when the news was fresh.

when? When they come from mass. And otherwise when too? Even when they treated the match with us. For his malice is so great, he cannot hide it: nor will God I hope suffer it.

Yet let us examine in reason now, if we be so charitable as to forget what is past, whether we may promise ourselves the assurance of his amity for the time to come or not: because peace with a true neighbor is a condition to be embraced. Nothing more certain than the contrary: we cannot promise it. His ambition to the empire, so long as he holdeth the Indies, will never die. The United Provinces are an object which, though he hath an eye to; yet he liketh not. What other things we communicate with him in, we shall never be assured of him (such as the nature of his religion) so long as we differ in matters of faith. He knows well enough the peril he stands in if he be attempted by his Majesty and the United Provinces. Consider what suggestions these are to keep him thinking upon, and imagine then what his own heart will prompt him to do when he seeth time for it.

Hitherto of the hurts that may be prevented by the enterprise: now of the fitness and honor of it to be an undertaking of his Majesty. He is the greatest islander of Christendom; therefore a navy is most proper to him. He is the Defender of the Faith, as well in understanding, learning, and godliness, as in title. Therefore the planting of the true Church there is a sacred work that even by office as it were belongs to him. He is of a great and liberal mind: the Indies will afford him the means to exercise it.

These considerations and the multitude of his subjects do seem to invite him: and in every part considerable in the design we may find something to persuade us, that seems to be a kind of offer (both in Religion, Policy, and Nature) preferred unto his Majesty as the Prince the fittest for the entertaining of it.

What would have been the end if this advice had been followed at this time no one can pretend to say further than this—it would have been something very different from what it was. The struggle of the nations would have begun upon another ground, for another stake; and the subsequent history—of the continent of Europe certainly, of England probably—would have been materially changed. But one reason, among others, for concluding that the paper was not drawn up at a later date is that the measures taken by the King had already made the course proposed impracticable. Already the Spaniards, besides reviving his hopes of the match by offering to modify their demands on the point of religion, had appealed to another of his weaknesses,—which deserves perhaps a better name. When civilized nations go to war it is always upon pretense of some wrong done or some danger apprehended; and if the pretense be just,—if the wrong has already been done, or if the danger be real which is apprehended,—it should always be possible (provided the parties are justly disposed) to settle the quarrel peaceably by making amends for the one or giving security for the other. When the Bohemian Protestants threw the government out of the window and established a Directorate, it was on pretense of defending privileges which they had a right to enjoy. When the Emperor of Germany invaded Bohemia, it was to prevent them from using means for redress which they had no right to use. It was clear that some wrong had been done on one side or the other, or on both. It was surely possible to set it right. If the Bohemians had been deprived of any real privileges, the Emperor might be persuaded to redress the wrong and give them securities against a repetition of it. If the insurrection was really a rebellion against legitimate authority, the insurgents might be persuaded to return to obedience upon receiving redress for the past and security for the

future. All that seemed to be wanted was a mediator who was not a party. England was in that position. The Spaniards suggested to James that he should undertake the office. James readily offered his services, and it had been agreed between them before the end of January that he should send an ambassador to Bohemia to treat of this composition; the Spanish ambassador at the Emperor's court giving him what help he could. While the two countries were united in a work like this, it was no time for quarrelling. And though the doubts as to the intention of the Spanish naval preparations which followed, and the equipment of a fleet for the Mediterranean, ostensibly to assist Spain in suppressing piracy, which was her pretense, — really to prevent her from attempting less legitimate objects, of which she was suspected, — threatened to interrupt the friendly enterprise they were engaged in, yet she drew back in good time; and in March the special ambassador was dispatched upon his mission. But by this time the difficulties of the case had been much increased. The Emperor Matthias died, leaving two prizes to be struggled for, — the imperial crown and the crown of Bohemia, — between parties who had too much at stake to have a chance of agreeing except under compulsion, and too imperfect a knowledge of the balance of forces for either of them to give way to the other without a trial of his strength. Ferdinand, the King designate of Bohemia, would not hear of any cessation of hostilities, unless the Bohemians first gave up all the points in dispute. The Bohemians would not so much as listen to any communication from England, unless it brought promises of support in men or money. Under such circumstances mediation could do nothing, and James's ambassador went to Spa to drink the waters. But the Spaniards had affected to be acting in concert with England throughout the transaction, and though it seems that they had really been supporting the

Emperor all the time, with money and promises of men,<sup>1</sup> yet they had carefully avoided all actions which would have justified remonstrance. Bacon's "short view," therefore, whatever the occasion may have been for which he drew it up, had to be put by for the present and wait for another turn in the game.

Toby Matthew was so much interested in the progress of the Great Instauration, and had been so much at Gorbambury during his recent visit to England, that the extent of Bacon's acquaintance with the writings of Galileo could hardly be unknown to him. And from the next letter — which comes conveniently to remind us of what we are in danger of forgetting amid this press of civil and political business, — namely, that the inauguration of the "Kingdom of Man" was still in Bacon's eyes the greatest business which he had in charge — we may probably infer that it was limited to a knowledge of the telescopic discoveries announced in the "*Sidereus Nuncius*" in 1611. Of these we know from the "*Descriptio Globi Intellectualis*" that he had received early intelligence and entertained great hopes: so great that when year after year passed away without bringing any more news of importance from those regions, he began to doubt whether the instruments and observers were altogether to be relied upon. But I am not aware of any evidence that he was at this time acquainted with any of Galileo's other writings. This answer to Bacon's discourse concerning the Flux and Reflux of the Sea may have been a copy of his letter to Cardinal Orsino, dated 1616, in which, according to Mr. Ellis, his own theory was originally propounded; and in which the error here mentioned as to the interval between high and low water was contained. It was not an error of inadvertence. For he noticed the "opinion" that (speaking generally) the interval was six hours, but noticed it only to condemn it as a delusion; which seems

<sup>1</sup> Gardiner, vol. i., p. 272.

strange, seeing that there could never have been two opinions as to the fact among persons competent to speak to it. Whether Mr. White succeeded in inducing him to make the required correction and reconcile his theory to it, I do not know. But if he did, Bacon had not heard of it when the “*Novum Organum*” was published. The attempt to explain the causes of the tides was not very fortunate on either side. Galileo rejected the influence of the moon, and referred the reciprocating action of the waters to mechanical causes which it is now known could not, even upon his own supposition, have produced it: and Bacon’s chief objection to his theory was that it assumed the rotation of the earth. The other works mentioned in this letter may have influenced Bacon in his later inquiries concerning the composition of metals, and the weighing of bodies in water; but I do not remember any direct allusion to them.

#### TO THE LORD CHANCELLOR.

MOST HONORABLE LORD,—It may please your Lordship, there was with me this day one Mr. Richard White, who hath spent some little time at Florence, and is now gone into England. He tells me, that Galileo had answered your discourse concerning the flux and reflux of the sea, and was sending it unto me; but that Mr. White hindered him, because his answer was grounded upon a false supposition, namely, that there was in the ocean a full sea but once in twenty-four hours. But now I will call upon Galileo again. This Mr. White is a discreet and understanding gentleman, though he seem a little soft if not slow; and he hath in his hands all the works, as I take it, of Galileo, some printed and some unprinted. He hath his discourse of the flux and reflux of the sea, which was never printed; as also a discourse of the mixture of metals. Those which are printed in his hand are these: the “*Nuncius side-reus*,” the “*Macchie solari*,” and a third, “*Delle Cose, che stanno su l’acqua*,” by occasion of a disputation that was amongst learned men in Florence about that which Archimedes wrote *de insidentibus humido*.

I have conceived that your Lordship would not be sorry to see these discourses of that man, and therefore I have thought it belonging to my service to your Lordship to give him a letter of this date, though it will not be there as soon as this. The gentleman hath no pretense or business before your Lordship, but is willing to do your Lordship all humble service; and therefore, both for this reason, also upon my humble request, I beseech your Lordship to bestow a countenance of grace upon him. I am beholden to the gentleman; and, if your Lordship shall vouchsafe to ask him of me, I shall receive honor by it. And I most humbly do your Lordship reverence.

Your Lordship's most obliged servant,

TOBIE MATTHEW.

BRUSSELS, from my bed, the 4th of April, 1619.

The new turn in the Bohemian question was not long in coming; and it is much to be regretted that the view which Bacon took of it at the time cannot now be ascertained. The fact, however, that his advice was offered, and (whether followed or not) was at least respectfully considered, is itself worthy of notice; the rather because it may possibly lead to the recovery of certain missing papers; which may have been only mislaid; but if separated from the rest of the collection would not be easily recognized as his.

The case upon which he had now to advise was very critical and difficult. The Bohemian quarrel had hitherto concerned England only as it affected the progress of the reformed religion and the peace and prosperity of Europe. She had as yet no separate or selfish interest in the issue. But she was now about to be drawn into the game, by no fault of her own, under very inconvenient conditions. On the 10th of March, 1619, by the death of the Emperor Matthias, Ferdinand of Styria had succeeded, in virtue of a previous election, to the crown of Bohemia. On the 16th of August — two days before he was unanimously elected Emperor of Germany — the States of Bo-



hemia deposed him, and elected in his stead Frederick the Count Palatine of the Rhine, head of the Protestant Union, and James's son-in-law; expecting of course that he would bring the strength of England with him. The English people were delighted at this triumph of Protestantism in the person of the husband of their favorite Princess, and would have rushed to his support at once. But James had always disapproved on principle of rebellion and usurpation; and not being ready to throw his principles overboard merely because the offender was his own son-in-law, he was far from being ambitious for him of the offered dignity. He had not yet satisfied himself that the revolt against Matthias was justifiable; and now they had taken upon themselves to depose the new King, who held his title by their own election, and to offer the throne to a stranger. Such a proceeding was contrary on the face of it to all his ideas of what was legitimate as between subjects and kings, and would have been enough of itself to deter him from becoming accessory, though after the fact. But even if he had seen no overruling objection to the proposal in point of principle, a man so full of thoughts and apprehensions could hardly be blind to the hazards in point of policy. In accepting the Bohemian crown, Frederick involved himself in a war against the Emperor, who already (as James knew by the report of his own ambassador) counted victory certain. He had had no experience in war; nor had he ever shown any genius for command. He had no general or tried ability under him. He had neither men nor money enough for the work; and yet he was not a man who had nothing to lose, for his own Palatinate was by its position particularly vulnerable. He would be a stranger in his own kingdom; his councillors, his nobility, and his people alike unknown to him. How many, or whether any, of the other Protestant princes of Germany would affront the Emperor by helping him, no one could tell. The virtues

which subsequent trial proved him to possess — spirit, courage, a religious faith in the sanctity of his cause, and an almost heroic incapacity to believe it lost — he had not yet given proof of. Altogether it had the look of an unhopeful enterprise ; and though we may not appeal to the event for proof that it would have been unfortunate had England entered into it with all her heart (because the event might in that case have been different), it was plain to dispassionate observers, though fully sympathizing with the popular wishes, that England was not in a sufficiently commanding position to make the difference great. Writing on the 11th of September, Chamberlain says to Carleton : —

“ We hear that the Palsgrave is crowned King of Bohemia, so that there is now no place left for deliberation, nor for mediation of peace, till one side be utterly ruined. God send him good success ; but surely it was a venturous part, and likely to set all Christendom by the ears. The world thinks it was a plot of the Prince of Orange and the Duke of Bouillon to draw in our King *nolens volens* ; but how he is every way provided for such a business you know, or may easily guess.”

Such was the case upon which Frederick now sent to ask his father-in-law's advice. His ambassador delivered his message to him on the 3d of September, overtaking him at Bagshot, on his way to Windsor, where (according to Camden) he arrived the same day. His answer at the moment was that “ he would consider of it.” At Windsor he was to see Bacon ; and it appears by the next letter that he had a “ discourse ” with him there, of an important character, though on what particular subject we are not informed, which was followed within a day or two by a letter (addressed to Buckingham apparently on the 8th) of “ advice touching the business of Bohemia.” On the 10th, a full account of all the past negotiations was laid before the Council by the King's command ; and the Board was prepared to deliberate

upon the advice which they should offer, when the discussion was interrupted by news that Frederick had made his choice and elected to accept the Bohemian crown.

This letter of Bacon's has not been preserved, and all we know of it is gathered from Buckingham's answer, as explained by the docket, which Stephens (who first printed the letter) seems to have overlooked; though without it we should not know that the King had consulted Bacon about the Bohemian question at all. Both letter and docket are here taken from the original — now in the British Museum.

#### TO THE LORD CHANCELLOR.

MY HONORABLE LORD, — As I was reading your Lordship's letter, his Majesty came, and took it out of my hands, when he knew from whom it came, before I could read the paper enclosed; and told me that you had done like a wise counsellor; first setting down the state of the question, and then propounding the difficulties, the rest being to be done in its own time.

I am glad of this occasion of writing to your Lordship, that I may now let your Lordship understand his Majesty's good conceit and acceptance of your service upon your discourse with him at Windsor, which though I heard not myself, yet I heard his Majesty much commend it both for the method and the affection you showed therein to his affairs, in such earnest manner as if you made it your only study and care to advance his Majesty's service. And so I rest

Your Lordship's faithful friend and servant,

G. BUCKINGHAM.

WANSTEAD, 9 Sept. 1619.

The advice enclosed in this letter, whatever it was, must have been addressed to the question how the offer made by the Bohemian Directorate should be *entertained*. The subsequent announcement that Frederick had decided to accept it altered the case; and there were those who, regarding it merely as a question of expediency, thought that (the struggle of the nations being now un-

avoidable) it was the policy of England to be first in the field.

But to the King political expediency was not the whole matter ; or, if it was, political morality was part of it. While the question was only how best to dissuade Frederick from a rash resolution, the concurrence of the Council (if he could obtain it) would add great weight to the advice he had to offer. Now that it had become a question of committing England to the approval and support of a cause which in point of justice he held to be at least doubtful, he wanted no advice ; and summoned the Council again only to hear his determination. In the absence of any authentic report of the proceeding, an extract of a letter written a few days after, which I find among Dr. Birch's historical collections, gives an account of it which is probably as trustworthy as any, though the writer's name is not stated.

“There was another meeting of the Council appointed on Sunday at Wanstead to resolve about the manner of his Majesty's carriage and proceedings in this business, whether he should engage himself unto the same King's assistance or no, and with what means. But his Majesty perceiving that the Council's inclinations tended to the affirmative (which was against his own), he prevented their advices ; being come himself to the Board with a plain declaration that he would not engage himself unto the quarrel afore he were satisfied of the justice of the States of Bohemia's proceeding in renouncing of Ferdinand, whom they had formerly chosen for their King. Besides that he said the business did not require such a haste of his resolutions, seeing that the winter was so near at hand, during which there could be nothing done, etc. Upon which speech of his Majesty's all the Board remained mute, there being but very few among them that had other affections than to favor the lively embracing of the cause, both for the common good of the religion and for the particular honor and interest of this State. And it is a great heart's grief to many that so glorious and brave an occasion should be no better entertained by us, and

that noble Prince no better seconded in his generous proceeding. Yet will I not deny but that some very good judgments do with very plausible reasons justify his Majesty's present forbearance, in that if upon this first advertisement he should break forth into an open declaration and assistance of the new King, he should not only belie all the former actions and professions of his life, whereby he hath gotten the reputation and title of a peace-maker of Christendom, — seeing that it would presently cast the imputation upon him of having been the author and abettor of that enterprise of his son-in-law, — but also would be likely to stir up the other Catholic princes, as France and others, to the defense of the other party, as being a mere quarrel of Religion; whereas by this his Majesty's reservedness it is supposed they will be contented and glad perhaps to see the new greatness of Ferdinand contested by that of the new King of Bohemia. With these discourses we must comfort ourselves when we cannot better help it."

Upon the question of policy there would, no doubt, be room for much dispute. But James's position I take to have been simply this: throughout all these troubles, in all his promises of assistance and coöperation, to whatever party, he had distinctly explained that he would have nothing to do with any unjust aggression upon the rights of others. Whether the acceptance of the Bohemian Crown by Frederick was or was not an unjust aggression upon the rights of Ferdinand, depended upon the legal validity of his election; and the first thing to be done was to ascertain whether it was legally valid or not. And this was the substance of the answer which he sent him.

The balance in the King's favor upon the year's account, which Bacon had reported twelve months before, had not been sufficient to meet the extraordinary expenditure, and "the King's state" — that is, the state of the Exchequer — was still the great difficulty of the government. The "ancient and honorable," and in Bacon's

opinion the only adequate, remedy (which was by Parliament, — and which, upon his recommendation, or at least in accordance with it, was, in spite of previous failures, on the point of being tried once more in the autumn of 1615), had been postponed by causes which he would himself probably have considered sufficient. For I think that neither during the popular excitement about the murder of Overbury, nor while the King was bent upon arranging a marriage between his son and the Spanish Infanta, nor while Sir Walter Raleigh's proceedings were under inquiry and his execution fresh in memory, nor while the Bohemian Protestants were in insurrection and the King was unprepared to take up arms in their support, could he honestly have encouraged him to hope for help from the House of Commons. From the summer of 1616, therefore, to the summer of 1620, it was only by the improvement and husbandry of the ordinary resources of the Crown that the King could be got out of debt. And in this way a great deal was done. At the death of Salisbury in 1612, the Crown was £500,000 in debt, and the ordinary annual revenue fell short of the ordinary annual expenditure by £160,000. At the beginning of 1617, about the time when Bacon received the seals, the ordinary revenue and expenditure had been brought nearly to an equality, — the receipts a little exceeding the expenses but not much. What the debt then amounted to I have not been able to ascertain; but it was found necessary about the same time to borrow another £100,000. In the following November a vigorous effort was made to retrench the expenses of the household; and in July, 1618, when upon the removal of the Earl of Suffolk the treasurership was put in commission, a general reform in the management of the department was begun, and carried on with no inconsiderable success. The next year I find from a statement in Sir Henry Yelverton's handwriting that the ordinary revenue ex-

ceeded the ordinary expenditure by £47,000; the debt being then £800,000. In January, 1619-20, the excess of the receipts over the issues had risen to £61,555, all of which was free to be employed for the discharge of pressing extraordinaries. On the 25th of March following, the debt was only £711,026. And on the 29th of September it had been further reduced (if I understand the record right) to £611,525. But though things were really improving, they were not improving nearly so fast as the case required, nor quite so fast (in Bacon's opinion) as the case admitted. And it must apparently have been some time between the two dates last mentioned — the 25th of March and the 29th of September, 1620 — that he addressed to the King a letter upon the means of rectifying his estate, in which he especially urged the appointment of another Lord Treasurer. Whatever its date, it was still under consideration at the beginning of October: by which time a new chance had offered itself.

In the mean time we hear of another occasional work of Bacon's which I should have been glad to see, but have not succeeded in finding. The uses to which the Star Chamber was put in the next reign, and which caused its precipitate dissolution with universal consent and applause within little more than twenty years from this time, are so associated in popular imagination with its name, that the very tradition of its proper functions and real character has been lost. The records of its proceedings, which were carefully kept, appear to have been abolished along with it; for they are nowhere to be found; and our more learned historians occupy themselves in discussions of its antiquity and origin, of the right by which it existed, the extent of the powers which it assumed, and the use which was or might have been made of them to support the usurpations of the prerogative; but the actual constitution of the Court, the rules by

which it was practically governed, and the conditions under which its powers were exercised, have been so little understood, or so imperfectly explained, that most people now think of it as a tribunal whose decisions were at the absolute disposal of the crown. It is true indeed, as Hume observes, that "its authority was at no time circumscribed nor its method of proceeding directed, by any law or statute;<sup>1</sup> that its members consisted of persons "who, all of them, enjoyed their offices during pleasure;"<sup>2</sup> that the trials were not by jury; and therefore that, in the hands of a king who could afford to disregard opinion, it was a very powerful instrument, and might be turned to very despotic uses. But so might the Courts of Common Law be — the intervention of the Jury notwithstanding: for the common-law Judges also held their offices during pleasure, and a single Judge that way disposed could turn his office to more fatal uses than the whole quorum of the Star Chamber, who could never go beyond fine and imprisonment; and who, if they were trusted (as all judges must be) with a large discretion, were at the same time restricted in the exercise of it by all the conditions which are usually found effective in preventing abuse. They were all men of high position, subject to observation, and having reputations to lose. The proceedings of the Court were public,<sup>3</sup> formal, elaborate, and governed by precedent. No cause could be

<sup>1</sup> *Hist. of Eng.*, vol. vi., p. 160.

<sup>2</sup> *Id.*, vol. v., p. 453. Almost all. But there were bishops among them, of whom this could not be said.

<sup>3</sup> I believe it is commonly supposed now to have been a *secret* tribunal. On the 22d of June, 1871, Mr. C. Dawson, arguing against the Ballot Bill, and observing that the best correction of bribery was public opinion, "added that the Ballot would destroy all this moral influence and introduce into the British Constitution the spirit of the Star Chamber. He would record his vote against this secret, silent, and insidious system." (*Daily News*, 23 June, 1871.) And on the 13th of April, 1878, I find in a leading article of the same paper, upon an order in Council enjoining adherence to the old rule which forbids Privy Councillors to publish "how the particular voices and opinions went," the remark, that such a rule "savours of the arbitrary proceedings of the Star Chamber."



heard if less than eight were present, and in giving sentence each member had to declare his own judgment separately, with his reasons, — the lowest beginning and the rest following in order. It is clear that in ordinary times such a body could not have been a *convenient* instrument of an unpopular policy. A king strong enough *otherwise* to defy his laws and his people might possibly succeed in working it, and a weak one in difficulties might be tempted to try: but popular indignation is a powerful deterrent, and to find eight men in high place of whom as many as five could be counted on as willing to make themselves personally and publicly responsible for unpopular acts which they felt to be unjustifiable, must in ordinary times have been extremely difficult. Accordingly, among the grievances complained of by the Parliaments of Elizabeth and James I., we do not find any mention of the Star Chamber: and though in the pamphlets and news-letters of the time complaints may probably be found against particular sentences, there were no symptoms as yet of a tendency to denounce the institution itself as an evil. Before the Reign of Charles I., I doubt whether any man whose opinion carries weight would have condemned it. Certainly, not many years before, two men whose opinions ought to carry very great weight spoke of it in terms which almost exclude the supposition that its value as an institution was at that time considered disputable. No two men had had more experience of the working of the Star Chamber — few had had better opportunities of watching the administration of justice generally — than Bacon and Coke. Both of them have recorded their opinion of it in books which were meant for posterity, and where they could have no motive for saying what they did not think.

“It is the most honorable Court,” says Coke, writing in his old age, when he was no longer a servant of the Crown but a leader of the popular cause in the House of Commons — “(our

parliament excepted) that is in the Christian world, both in respect of the Judges of the court, and of their honorable proceeding according to their just jurisdiction and the ancient and just orders of the Court. For the Judges of the same are (as you have heard) the grandees of the realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the King's Council, the Lord Privy Seal, all the Lords spiritual, temporal, and others of the King's most honorable Privy Council, and the principal Judges of the realm, and such other Lords of Parliament as the King shall name. And they judge upon confession or deposition of witnesses: and the Court cannot sit for hearing of causes under the number of eight at the least. And it is truly said, *Curia Camera stellatæ si vetustatem spectemus, est antiquissima, si dignitatem, honoratissima*. This Court, the right institution and ancient orders thereof being observed, doth keep all England quiet."

"This Court," says Bacon, writing in 1621, — "is one of the sagest and noblest institutions of this kingdom. For in the distribution of courts of ordinary justice . . . there was nevertheless always reserved a high and præminent power to the King's Council, in causes that might in example or consequence concern the state of the commonwealth; which if they were criminal the Council used to sit in the chamber called the Star Chamber, if civil, in the white chamber, or Whitehall. And as the Chancery had the prætorian power for equity, so the Star Chamber had the censorian power for offenses under the degree of capital. This Court of Star Chamber is compounded of good elements, for it consisteth of four kinds of persons, — Councillors, Peers, Prelates, and Chief Judges. It discerneth also principally of four kinds of causes, — forces, frauds, crimes various of stellionate, and the inchoations or middle acts towards crimes capital or heinous, not actually committed or perpetrated."

This Bacon wrote in his history of Henry VII., in mentioning the act passed in the 3d year of that reign, "giving the Court of Star Chamber authority to punish divers misdemeanors." But his opinion of it as a politic institution appears still more clearly and unmistakably in his great work "*De Augmentis Scientiarum*" (pub-

lished in 1623), where, among the specimens of books which are wanted, is the beginning of a treatise on "Universal Justice, or the Fountains of Law," the object of which should be to give a general character of administrative justice according to the true idea of it, drawn not from the institutions of any particular state, but from the universal laws of human society; by which, as by a pattern, particular kingdoms and commonwealths might prove and amend their own laws. Now one of the principal features in this model (so far as it is drawn out) is the institution of prætorian and censorian courts to supply the deficiencies of the laws; that is, to deal with cases for which the laws have failed to provide: and if his ideal description of the constitution and functions of the *censorian* court be compared with those of the Star Chamber as it was in his time, it may well be suspected that it sate for the picture.

I may be asked indeed how it came that an institution which deserved such a character as this up to the end of James the First's reign was swept away only sixteen years after, with universal consent, — without a struggle, or a hope, or a regret. My answer is, that a King who was not otherwise strong enough to defy his people attempted to do it by means of the Star Chamber, and so provoked them to take it away from him. The impossibility of obtaining supplies from Parliament except upon conditions to which he could not submit had driven Charles to extraordinary ways of raising money.

"For the better support of these extraordinary ways," says Clarendon, "and to protect the agents and instruments who must be employed in them, and to discountenance and suppress all bold inquirers and opposers, the Council Table and Star Chamber enlarge their jurisdictions to a vast extent, 'holding (as Thucydides said of the Athenians) for honorable that which pleased and for just that which profited.' And being the same persons in several rooms, grew both courts of law to determine

right, and courts of revenue to bring money into the Treasury : the Council Table by proclamations enjoining to the people what was not enjoined by the law, and prohibiting that which was not prohibited : and the Star Chamber censuring the breach and disobedience to those proclamations by very great fines and imprisonment ; so that any disrespect to any acts of state or to the persons of statesmen was in no time more penal, and those foundations of right by which men valued their security, to the apprehension and understanding of wise men, never more in danger to be destroyed.”<sup>1</sup>

And again : —

“The exorbitances of this court had been such (as hath been before touched) that there were very few persons of quality who had not suffered or been perplexed by the weight or fear of those censures and judgments. For having extended their jurisdiction from riots, perjuries, and the most notorious misdemeanors to an asserting all proclamations and orders of state ; to the vindicating illegal commissions, and grants of monopolies (all which were the chief ground works of their late proceedings), no man could hope to be longer free from the inquisition of that Court than he resolved to submit to those and the like extraordinary courses. And therefore there was an entire inclination to limit and regulate the proceedings of that Court : to which purpose a bill was brought in,”<sup>2</sup> etc.

He then relates how a bill which was intended for the regulation of the Court grew by a kind of accident into a bill for its total abolition, was passed by the Commons contrary to all precedent upon a single reading without being committed, met with no opposition in the House of Lords, and so received the Royal Assent, —and concludes the story in words which show that as to the value of the institution when placed under proper regulation, he entirely agreed with Coke and Bacon.

“Thus fell that high Court, a great branch of the Prerogative ; having rather been extended and confirmed than founded

<sup>1</sup> Clarendon, book i., p. 122.

<sup>2</sup> *Id.*, book iii., p. 400.

by that Statute of the tenth<sup>1</sup> year of K. Henry VII., for no doubt it had both a being and a jurisdiction before that time, though vulgarly it received date from thence; and whilst it was gravely and moderately governed, was an excellent expedient to preserve the dignity of the King, the honor of his Council, and the peace and security of the kingdom. But the taking it away was an act very popular; which it may be was not then more politic than the reviving it may be thought hereafter, when the present distempers shall be expired.”<sup>2</sup>

If the abuses which were felt to be so intolerable and thought to be so incorrigible arose (as it seems they did) from the undue extension of the jurisdiction of the Court, it must have been for want of public rules defining its jurisdiction and regulating its procedure. And this defect Bacon seems to have observed already, and designed to remedy. For a set of “rules for the Star Chamber,” which were to constitute a “durable pillar for the justice of this kingdom in perpetuity,” can hardly have had any other object. In the beginning of June, 1620, when there was no outcry against the Court,<sup>3</sup> he wrote to Buckingham as follows:—

#### TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — I went to Kew for pleasure, but I met with pain. But neither pleasure nor pain can withdraw my mind from thinking of his Majesty’s ser-

<sup>1</sup> So printed. It should evidently be “third.”

<sup>2</sup> Clarendon, book iii., p. 401.

<sup>3</sup> There were some symptoms, however, about this time, of popular murmur against the extent of jurisdiction assumed; and it pointed to the very abuse which brought the Court to an untimely end. “Indeed,” says Chamberlain, writing on the 8th of July, 1620 “the world is now much terrified with the Star Chamber, there being not so little an offense against any proclamation but is liable and subject to the censure of that court.” He does not, however, mention any particular case in which its power seems to have been abused: and the question whether an offense against a proclamation was justly censurable depends upon the question whether it was a proclamation *of the law*, or only of the King’s pleasure. But the existence of the murmur may have suggested to Bacon the application of the remedy.

vice. And because his Majesty shall see how I was occupied at Kew, I send him these papers of Rules for the Star Chamber; wherein his Majesty shall erect one of the noblest and durablest pillars for the justice of this kingdom in perpetuity that can be; after by his own wisdom and the advice of his Lords he shall have revised them, and established them. The manner and circumstances I refer to my attending his Majesty. The rules are not all set down, but I will do the rest within two or three days. I ever remain

Your Lordship's most obliged friend,  
and faithful servant,

FR. VERULAM, Canc.

9 June, 1620.

Whatever the *form* of the enclosed Rules may have been, the principles to which they were to give effect would no doubt be those which are laid down in the aphorisms concerning Censorian Courts: of which (as the best supply of the lost paper which I can offer) I subjoin a translation.

#### APHORISM 32.

Let there be Courts and jurisdictions which may decide according to the judgment and discretion of a good man, in cases where the rule of law fails. For the law (as has been said before) cannot be framed to meet all cases; but is adapted to such as generally occur. But Time, as was said of old, is the wisest of things, and the author and inventor every day of new cases.

#### APHORISM 33.

New cases occur both in criminal and civil causes; in criminal, requiring punishment; in civil, requiring relief. The Courts which deal with the former we call *Censorian*; those which deal with the latter *Prætorian*.

## APHORISM 34.

Let the Censorian Courts have jurisdiction and power not only to punish new offenses, but also to increase the punishments prescribed by the law for old offenses, where the cases are heinous and enormous. For what is enormous is in a manner new.

## APHORISM 35.

Let the Prætorian Courts in like manner have power as well to give relief against the *rigor* of the law, as to supply the *defect* of the law. For if a remedy be due to one whom the law has forgotten, much more to one whom it has wounded.

## APHORISM 36.

Let these Censorian and Prætorian Courts confine themselves to cases enormous and extraordinary; and not encroach upon the ordinary jurisdictions; lest the thing tend rather to supplant the law than to supply it.

## APHORISM 37.

Let these jurisdictions reside in the Supreme Courts only, and not be communicated to the Inferior. For the power to supply, extend, or moderate laws, comes very near to the power of making laws.

## APHORISM 38.

But let not these Courts be committed to a single person; but consist of several. And let their decrees not go forth in silence; but let the Judges state their reasons, and that openly before the bystanders; so that the authority, which in respect of power is free, may yet be circumscribed in respect of fame and opinion.

## APHORISM 39.

Let them not have authority to shed blood ; nor let any capital sentence be pronounced by any court whatever except according to a law known and certain. God himself denounced death before he inflicted it ; and no man ought to be deprived of his life, who did not know beforehand that he was sinning against his life.

## APHORISM 40.

In the Censorian Courts let there be a third vote allowed ; that is, that the judges be not obliged either to acquit or condemn, but may likewise declare the fact not proven. And let there be power to inflict not a penalty only, but also a note or mark ; such, I mean, as shall not extend to actual punishment, but may end either in admonition only, or in a light disgrace, — punishing the offender as it were with a blush.

## APHORISM 41.

In the Censorian Courts let the inchoating and middle acts towards all great crimes be punished, though the fact be not accomplished. For it is as well the part of severity to punish the beginnings of crimes, as of mercy to prevent (by punishing the middle acts) the perpetration of them.



## CHAPTER II.

A. D. 1620-1621. JULY-MARCH. ÆTAT. 60.

THE state of the Exchequer continued to be Bacon's great subject of anxiety. His last letter of advice had as yet produced no effect. The Commissioners were working on as they could, but without any prospect of effecting a cure; and the King's study of the Bohemian question had not yet enabled him to take an attitude which would ensure him the sympathy of another Parliament. The proofs of the validity of Frederick's election which he had asked for had been laid before him in January, and about the same time an argument on the opposite side had been submitted on the part of Spain. His conclusion upon reading both sides was that though the estates of Bohemia were not bound to elect Ferdinand, it did not follow that they had a right to annul the election. The question therefore was "whether the deposition of a King once elected was valid by the constitution of Bohemia." Had it been possible for him to keep quite out of the quarrel, it would have mattered little how long he was in coming to a conclusion upon that point. To take part with the new King of Bohemia, whether he were usurper or legitimate, would have been to engage in a cause destined to failure; to take part against him would have been to enrage England and play into the enemy's hands; to offer mediation would have been to invite a second rejection without any hope of doing good. But unfortunately it was not practicable to keep altogether out of the quarrel. As soon as Frederick, in accepting the Bohemian throne, put himself at war with the Emperor, the Emperor began to make

preparations for attacking the Palatinate, which lay conveniently for annexation by one of his independent allies, and served very well for the purchase of his alliance. Now if Frederick alone had had an interest in the Palatinate, James would probably have been content under the circumstances to let him defend it for himself along with his new kingdom. But the reversion of the Palatinate belonged to Frederick's heir, who was James's grandson, and (being no way implicated in the offense) might reasonably look to him to protect his interest in it. Though he could not justly complain of the blow as aimed at Frederick, he might justly parry it as falling upon England. And when the movements of the armies began to point unmistakably in that direction, he consented at last to allow volunteers to be levied in England and Scotland by Frederick's agents, and to borrow money for his use. Only it was to be "on the express condition that it should be employed in the defense of the Palatinate."<sup>1</sup>

This small concession to the English war-party (which was made in March, 1619-20) alarmed Spain; and Gondomar was once more sent back to counteract their influence and keep James out of their hands. He came armed with complaints and remonstrances, and charges of promises unperformed; as if expecting to find a friend turning enemy — an expectation which a very warm and cordial reception does not seem to have done anything to remove. But on seeing the real state of James's mind, — his deep and serious vexation and perplexity, his anxiety to be just to all parties, his continued desire for the Spanish alliance, and the strong pressure which he had to resist from the other side, — and having been warned also by Digby of the risk he would run by pressing him too hard, — he adopted a mild and friendly tone and agreed to refer disputes to amicable conferences with

<sup>1</sup> Gardiner, vol. i., p. 310.

Digby and Buckingham. The proper business of the first interview being thus concluded, they proceeded to talk about the affairs of the world ; among the rest, about the assistance which James had been pressed to send to his daughter and grandchildren, and the apprehension of an attack upon the Palatinate by the Emperor's forces ; upon both of which Gondomar's answers were to the purpose, and from James's point of view not easy to dispute. Upon the first, " Let them come back to the Palatinate," he said, " and he would go himself as a soldier to defend them ;" but to succor them at Prague was not to defend them against aggression, but to help them in an act of aggression upon others. And as for the Emperor, " What would *you* do," he asked, " if any one were to take London from you ?" — a question upon which James " drew back," he says, and took refuge in a pious hope that " everything would be well accommodated." It was a question too much to the purpose, and could only be answered in one way. The conference seems however to have left James under the impression that the Palatinate was not in immediate danger, and that Spain would join in an effort for a general pacification upon the principle of no aggression by anybody upon anybody.

Having reported to Philip the result of this first interview, Gondomar next proceeded to reopen the marriage treaty ; which he had suspended upon the question of engaging to repeal the laws against the Catholics. He told James that Philip was so anxious for the alliance that he was ready to advance £150,000 out of the marriage portion as soon as the articles were agreed upon. James, who had already in the former interview declared himself still desirous that the match should proceed, replied by a renewal of his former offer with the old conditions : to which Gondomar this time made no objection. It seemed as if the Spaniards had thought better of it,

and come round to his terms. But the truth was that they had given it up as hopeless ; and having no intention of concluding the bargain, they no longer cared what terms they offered. Since they found that the conditions which they originally proposed could not be got, they had ceased to wish for the match and were now using it only as a diversion. For this it served all the better for being a fiction. James's heart, open enough at all times, opened more freely than ever under the influence of this seeming-friendly overture. He frankly admitted that he considered his son-in-law a usurper, and would give him no help while he remained in his present position, and that what he ought to do was nothing less than to "resign Bohemia." Upon hearing which, Gondomar reported to Philip that he might proceed in his arrangements with the Emperor, without fear of interruption from England.

The negotiations which ended in this report seem to have occupied about three months ; for it was now the middle of June, 1620, and Gondomar had arrived in England in the middle of March. They were followed by a great attempt on James's part to bring about the general pacification, of which he supposed Spain to be as desirous as he was himself. He despatched ambassadors to Venice, to Vienna, to Brussels, to the States of the Rhine, to Dresden, and to Prague. And certainly if there was no hope of success, it was only because the other parties were not so just or not so intelligent as he was. The disorder had not yet spread so far but that if they had been willing to settle the dispute upon the principle which he had formerly recommended — which was in effect the simple one that each party should take what was his and resign what was not his — order might yet have been restored without difficulty. It was not too late for Ferdinand to restore the Protestants of Bohemia to quiet enjoyment of the "patents, agreements, and or-

dinances granted in past times in their favor by the Emperors, Kings of Bohemia ;" to release prisoners unjustly detained ; to exclude the Jesuits from meddling with matters of state ; or "to remember the oath which he took at his coronation, which ought not to be broken." And although Frederick (whose interest in the matter was not altogether selfish, for he believed himself to be fighting for a great cause, in which he proved his faith by remaining loyal to it long after it had ceased to yield him either gain or glory) would have to resign his new crown, — which he could hardly be expected to do willingly, — yet if England, Spain, Holland, and Germany had united in insisting upon it, he must have yielded. The difficulty lay in this — that none of the parties to the quarrel were content to settle it upon terms which left them no better off than they were before. Ferdinand wanted to recover his kingdom without conditions as to his coronation oath or concessions to the Protestants. Maximilian of Bavaria had already bargained with him for the annexation of the upper Palatinate to his own dominion. The Directors of Bohemia wanted to keep the government in their own hands. All the Catholic powers wanted to gain upon Protestantism, all the Protestant upon Catholicism. And thus it came that James's attempt to mediate failed as before. As before, however, it is the failure only that was to be regretted, not the attempt. Judging by the result, who can doubt that its success would have been a benefit to Europe ?

While this was going on, an arrangement was brought about by the influence of France with a different object and a very different effect. On the 23d of June, 1620, a treaty was concluded between the Protestant Union and the Catholic League which made the march upon the Palatinate easier and safer. This quickened the enlistment of volunteers in England : but it did not altogether relieve James from his difficulty. The threatened

movement, though justly alarming, was one which, from *his* point of view, he could not justly complain. When Gondomar represented to him that the persons whose throne Frederick had usurped could not be expected to refrain from attacking him wherever he was most vulnerable, and that the way to preserve the Palatinate and establish peace was simply to restore Bohemia to its rightful owner, what could he say in answer? He could not deny that Frederick's position in Bohemia was an act of usurpation; for he thought it was, and had always said so: and admitting that, how could he deny the other? All he could say was that "he hoped God would arrange everything for the best" — "a demonstration of helplessness," says Mr. Gardiner. And helpless no doubt he was. He was helpless, as a father is helpless whose son has done something for which he cannot deny that he deserves punishment. His only resource at present was to indulge himself in the belief (which Gondomar would no doubt be ready to suggest) that the Palatinate was not the immediate object of attack, — that the head of the rebellion being at Prague, it was there the Emperor would seek it.

Such, up to the end of August, 1620, was James's position with regard to the great Bohemian question; to which, as long as he remained true, it is easy to understand how little help he could look for from an English House of Commons — a body no way implicated in his antecedent engagements and quite unable to understand his scruples. The further development of the designs of the contending parties altered his position materially and opened a great opportunity, as we shall see presently.

The Spaniards had managed both their military and diplomatic movements so well, that in spite of two English ambassadors sent to Brussels to watch their proceedings, they contrived to keep James in the belief that their army under Spinola was destined for Bohemia, un-

til it had reached a convenient position for a sudden descent upon the Palatinate. In the beginning of August, the Dutch (to whom Spinola's aim was immaterial, his discomfiture being equally important to them upon either supposition) had urged James to anticipate the expected blow by joining with them in an attack upon the Indian fleet, — for which the twenty ships he had just got ready for the suppression of piracy in the Mediterranean might be conveniently used. But this proposal he had refused to listen to, declaring it to be an action "most dishonorable and ill beseeeming his sincerity," — and he seems to have maintained his belief in the sincerity of the Spaniards, until news came on the 5th of September that Spinola, turning suddenly round, had marched towards the Palatinate, taken Oppenheim, Kreutznach, and Alzei, and established a basis of operations at Mentz. After this, he could deceive himself no longer; and though he could not, when challenged by Gondomar, quote any express promise from Spain that the Palatinate should not be attacked, he was now clearly released from his own implied engagement to give no support to his son-in-law in a quarrel which he held to be unjust. If it was lawful for the Emperor to strike at Frederick wherever he was most vulnerable, it was no less lawful for England to intercept the blow when the region struck at was one in which England had a reversionary interest. Upon this news, therefore, he declared his resolution to take up arms for the defense of the Palatinate, — a resolution so well in accord with the popular sentiment that it placed him at once in the position in which Bacon had so long been desiring to see him, — in which he might call another Parliament without fear of another miscarriage. Whether the resolution was in any way due to Bacon, we do not know; for though it is not likely that so many weeks could pass after the arrival of such a piece of news without counsel from him asked or offered, no record of

any has survived. What we know is, that by the end of the month the King had come to the conclusion not only that the Palatinate must be defended, but that a Parliament must be called.

With what satisfaction Bacon received his directions to consider of the measures which should be taken by way of preparation for a Parliament, we may gather from the next letters. And no wonder. A Parliament under these conditions meant not only the substantial relief of the King's estate, but the discontinuance of those irregular shifts and expedients into which he had been driven for raising money, and a return to "the ancient and honorable remedy." It meant the taking up of a foremost position on the Protestant side in a great European struggle ; which would draw popular patriotism away from domestic quarrels and engage King and people in a common cause. It meant the breaking off (probably) of the Spanish match ; and that upon a quarrel which would be "a great reputation to the King both with his subjects here at home and his friends of the reformed religion in foreign parts." It meant the strengthening of the ties between the Protestant powers, and the recovery of England's proper place in the politics of Europe. If we look back through his various counsels and speculations on the policy of the government, we shall find that all these were favorite objects with him. And upon a resolution to enter into a war for the defense of the Palatinate and appeal to Parliament for support, all these seemed likely (with good guidance) to follow.

#### TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — I write now only a letter of thanks to his Majesty, for that I hear, in my absence he was pleased to express towards me (though unworthy) a great deal of grace and good opinion before his Lords ; which is much to my comfort, whereunto I must ever im-



pute your Lordship as accessory. I have also written to him what signification I received from Secretary Naunton of his Majesty's will and pleasure, lest in so great a business there should be any mistaking.

The pain of my foot is gone, but the weakness doth a little remain, so as I hope within a day or two to have full use of it. I ever remain

Your Lordship's most obliged friend  
and faithful servant,

FR. VERULAM, Canc.

2 October, 1620.

TO THE KING'S MOST EXCELLENT MAJESTY.

IT MAY PLEASE YOUR MAJESTY, — I thought myself an unfortunate man that I could not attend you at Theoballs. But I hear that your Majesty hath done as God Almighty useth to do, which is to turn evil into good, in that your Majesty hath been pleased upon that occasion to express before your Lords your gracious opinion and favor towards me, which I most humbly thank your Majesty for, and will aspire to deserve.

Secretary Naunton this day brought me your pleasure in certain notes; that I should advise with the two Chief Justices (old Parliament-men) and Sir Edward Cook (who is also their senior in that school) and Sir Randall Crewe, the last Speaker, and such other Judges as we should think fit, touching that which mought in true policy, without packing or degenerate arts, prepare to a Parliament, in case your Majesty should resolve of one to be held; and withal he signified to me some particular points, which your Majesty very wisely had deduced.

All your Majesty's business is *super cor meum*, for I lay it to heart. But this is a business *secundum cor meum*; and yet, as I will do your Majesty all possible good services in it, so I am far from seeking to impropr-

ate to myself the thanks, but shall become *omnibus omnia*, as St. Paul sayeth, to attain your Majesty's ends.

As soon as I have occasion, I will write to your Majesty touching the same, and will have special care to communicate with my Lords, in some principal points, though all things are not at first fit for the whole table. I ever rest

Your Majesty's most bounden  
and most devoted servant,  
FR. VERULAM, Canc.

Your Majesty needeth not to doubt but that I shall carry the business with that secrecy which appertaineth.  
2 October, 1620.

At the same time that the resolution was taken to call a Parliament, a subscription was set on foot among the nobility and Council to supply funds for the immediate occasion; which could not bear so long a delay as levy by a Parliamentary subsidy would require. The Prince led with an offer of £10,000. The Lord Chancellor and most of the principal councillors followed with £1,000 each: the Lord Digby with £500 and others in proportion, and those who were absent were informed of what had been done and invited to contribute. Which things being known, while the consultations in Council were kept carefully secret, caused much apprehension to the politicians of the time; who went so far as to conclude that there would be no Parliament after all; especially when they heard the Lord Chancellor, in addressing a Judge newly admitted to the King's Bench, enlarge upon the respect due to the King's Prerogative.

"The first day [of term] Sir Thomas Chamberlain, Chief Justice of Wales and Chester, was sworn a judge of the King's Bench: at whose admission the Lord Chancellor took occasion to enlarge himself much upon the Prerogative, and how near it was akin and of blood (as he termed it) to the Common Law; saying further (whatsoever some unlearned lawyers might prat-

tle to the contrary) that it was the accomplishment and perfection of the Common Law. Which new doctrine, but now broached, is perhaps to prepare the way to a purpose in hand, that all men shall be rated and pay by way of subsidy, as if it were done by Parliament; and those that refuse, their names to be certified that other order may be taken with them. This hath quite put down the speech of a Parliament for the present, and perhaps the name of it hereafter. Though the Nobility and Council went cheerfully on in the former course of Benevolence or Contribution, some offering largely for the present, some for years, . . . yet it was thought it would not hold out, and that it would prove a reckoning without our host: wherefore it was found requisite to make it a common burden that so it might be the better borne."<sup>1</sup>

It seems strange to find a man like Chamberlain treating this doctrine of the Prerogative as new; for unless the Crown held all its Prerogatives by statute, from what source could they come if not from the same whence the Common Law came? And the occasion was quite appropriate. But the practical inference which the outside politicians drew from it is worth recording, by way of caution. We shall see presently how very wide of the mark they were in this instance at least, and may learn to be the more wary in accepting the news of the day for the history of the time.

But I must first touch upon a very different subject. By a strange chance, this dawn of hope for the kingdom of England coincided with the announcement of a new hope for all the world, which Bacon had still more at heart — the hope of the coming of "the Kingdom of Man." For it so happened that the first public announcement of the new philosophy which was to teach man the true use of his understanding and lead him by a certain path to the knowledge of all things which it is lawful for man to know, was reserved for the same auspicious sea-

<sup>1</sup> Chamberlain to Carleton, 14 October.

son. A handsomely printed volume containing a prospectus of the "*Instauratio Magna*," followed by a series of aphorisms ("*De Interpretatione Naturæ et Regno Hominis*"), together with a set of directions for the formation of a natural and experimental history, — all that ever was done of the "*Novum Organum*," — was ready for distribution on the 12th of this October. It is true that the hope proved deceitful in both cases: for the kingdom of England was destined to relapse into a worse condition than before; and the certain path to the knowledge of all things is still unmade and has led to nothing; but the future was hidden and did not trouble him, while the hope, which was present with him, filled his mind with confident anticipations of good to all mankind, — remote perhaps, but certain and immense.

TO THE KING'S MOST EXCELLENT MAJESTY.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — It being one thing to speak or write, specially to a King, in public, another in private, although I have dedicated a work, or rather a portion of a work, which at last I have overcome, to your Majesty by a public epistle, where I speak to you in the hearing of others; yet I thought fit also humbly to seek access for the same, not so much to your person as to your judgment, by these private lines.

The work, in what colors soever it may be set forth, is no more but a new logic, teaching to invent and judge by induction (as finding syllogism incompetent for sciences of nature), and thereby to make philosophy and sciences both more true and more active.

This, tending to enlarge the bounds of Reason and to endow man's estate with new value, was no improper oblation to your Majesty, who, of men, is the greatest master of reason, and author of beneficence.

There be two of your council, and one other bishop of this land, that know I have been about some such work

near thirty years; so as I made no haste. And the reason why I have published it now, specially being unperfect, is, to speak plainly, because I number my days and would have it saved. There is another reason of my so doing, which is to try whether I can get help in one intended part of this work, namely, the compiling of a natural and experimental history, which must be the main foundation of a true and active philosophy.

This work is but a new body of clay, whereinto your Majesty by your countenance and protection, may breathe life. And, to tell your Majesty truly what I think, I account your favor may be to this work as much as an hundred years' time: for I am persuaded the work will gain upon men's minds in ages, but your gracing it may make it take hold more swiftly; which I would be glad of, it being a work meant not for praise or glory, but for practice, and the good of men. One thing, I confess, I am ambitious of, with hope, which is, that after these beginnings, and the wheel once set on going, men shall suck more truth out of Christian pens than hitherto they have done out of heathen. I say with hope; because I hear my former book of the "Advancement of Learning" is well tasted in the universities here, and the English colleges abroad; and this is the same argument sunk deeper.

And so I ever humbly rest in prayers, and all other duties,

Your Majesty's most bounden  
and devoted servant,

FR. VERULAM, Canc.

YORK HOUSE, this 12th of October, 1620.

Not long after came the King's acknowledgment of the "Novum Organum;" written, according to Dr. Rawley, with his own hand.

MY LORD,—I have received your letter and your book, than the which you could not have sent a more acceptable present unto me. How thankful I am for it cannot better be expressed

by me, than by a firm resolution I have taken; first, to read it thorough with care and attention, though I should steal some hours from my sleep: having otherwise as little spare time to read it as you had to write it. And then to use the liberty of a true friend, in not sparing to ask you the question in any point whereof I shall stand in doubt (*nam ejus est explicare, cujus est condere*): as, on the other part, I will willingly give a due commendation to such places as in my opinion shall deserve it. In the mean time, I can with comfort assure you, that you could not have made choice of a subject more befitting your place, and your universal and methodick knowledge; and in the general, I have already observed, that you jump with me, in keeping the mid-way between the two extremes; as also in some particulars I have found that you agree fully with my opinion. And so praying God to give your work as good success as your heart can wish and your labors deserve, I bid you heartily farewell.

JAMES R.

October 16, 1620.

From Bacon's answer to this letter it will be seen that the dedication and presentation was not merely a compliment; he had reason to hope that the King might prove in one department a valuable fellow-laborer. Of the place which the collection of natural history held in his plan for the regeneration of philosophy I have spoken at large in my preface to the "*Parasceve ad historiam naturalem et experimentalem*," and endeavored to show that (however subordinate its place may be in a true estimate) in his own estimate it stood first in importance, as that part which (even without any of the rest) would be of much use, but without which all the rest would be of no use. "*Itaque huc res redit, ut organum nostrum, etiamsi fuerit absolutum, absque historiâ naturali non multum, historia naturalis absque organo non parum, institutionem scientiarum sit proventura.*" Now there can be no doubt that if the King had taken a fancy to that part of the business, his assistance in "setting men to work" upon it would have been of inestimable value.

## TO THE KING.

MAY IT PLEASE YOUR MAJESTY, — I cannot express how much comfort I received by your last letter of your own royal hand. I see your Majesty is a star, that hath benevolent aspect and gracious influence upon all things that tend to a general good.

Daphni, quid antiquos signorum suspicis ortus ?  
Ecce Dionæi processit Cæsaris astrum ;  
Astrum, quo segetes guaderent frugibus, et quo  
Duceret apricis in collibus uva colorem.<sup>1</sup>

This work which is for the bettering of men's bread and wine, which are the characters of temporal blessings and sacraments of eternal, I hope by God's holy providence will be ripened by Cæsar's star.

Your Majesty shall not only do to myself a singular favor, but to the business a material help, if you will be graciously pleased to open yourself to me in those things, wherein you may be unsatisfied. For though this work, as by position and principle, doth disclaim to be tried by anything but by experience, and the resultats of experience in a true way ; yet the sharpness and profoundness of your Majesty's judgment ought to be an exception to this general rule ; and your questions, observations, and admonishments, may do infinite good.

This comfortable beginning makes me hope further, that your Majesty will be aiding to me, in setting men on work for the collecting of a natural and experimental history ; which is *basis totius negotii* ; a thing which I assure myself will be from time to time an excellent recreation unto you ; I say, to that admirable spirit of yours, that delighteth in light : and I hope well that even in your times many noble inventions may be discovered for

<sup>1</sup> " Why watch the rising of those ancient signs ?  
Lo Cæsar's Star advancing: Star that makes  
The cornfields glad with harvest, and the grape  
Turn purple on the sunward-sloping hill."

man's use. For who can tell, now this mine of Truth is once opened, how the veins go, and what lieth higher and what lieth lower? But let me trouble your Majesty no further at this time. God ever preserve and prosper your Majesty.

The voluntary contribution for the defense of the Palatinate had been taken up with alacrity by the nobility about the Court and in London, but the returns from the country were so slow in coming in as to suggest a doubt whether the nation was as eager in the cause as it had been supposed to be. When three weeks had passed without any considerable return, letters were sent round from the Council to all Peers, Bishops, Deans, etc., to explain what had been done, and why, and what was wanted, and what expected.

The invitation to contribute was addressed only to the wealthy classes; and it is plain that after this they must all have known perfectly well that the policy of the government was to defend the Palatinate, that the danger was near, and the need of money to meet it urgent. If the wealthy classes of the country, so appealed to, contributed little, the inference must surely be that their zeal was not much to be depended upon. The leaders of the war-party were zealous enough, and not too scrupulous; but the followers do not seem to have been overpowering either in numbers or devotion.

For the time, however, which must necessarily pass before Parliament could meet—the announcement of which did not wait for the result of the circular—the money subscribed (amounting altogether to about half a subsidy) was no inconsiderable help; and if the progress of the contribution showed that the constituencies were not so eager in the cause as the politicians, it served for a warning not to rely too confidently upon the disposition of the House which they were to return.



"If his Majesty," wrote Bacon on the 16th of December, "said well, that when he knew the men and the elections he would guess at the success; the prognosticks are not so good as I expected, occasioned by late occurrences abroad, and the general licentious speaking of state matters, of which I wrote in my last."

The "late occurrences abroad" were the defeat of Frederick at Prague on the 29th of October, and the capture of the city by the Bavarians. The news was first heard in England on the 24th of November, and so exasperated the popular hatred of Gondomar that he thought it necessary to apply to the Council for protection, who granted him a guard for his house. Among the political writings which the time brought forth was one entitled "*Vox populi*, or News from Spain, which may serve to warn both England and the United Provinces how far to trust to Spanish pretenses." It was in the form of an imaginary conversation, and had come out just before. The government were inquiring after the author; who had taken the precaution to put himself out of reach; and it was probably one of the specimens of general licentious speaking of state matters which suggested to Bacon the expediency of a proclamation on the subject which was published on the 24th of December, and may be seen in Rymer:

The disaster of Prague did not materially affect the preparations for the coming Parliament; for it tended only to strengthen and stimulate the popular desire for the defense of the Palatinate; and the more the House of Commons was bent upon that, the more easy it would be to deal with about domestic matters. But it did very materially alter the position of the government upon the question, and opened a new prospect of settlement. Hitherto James had been unable to support his son-in-law without supporting what he conceived to be an unjustifiable rebellion — a bad cause. He was ready to

support him only on condition that he resigned what he had no right to — which was the throne of Bohemia; but this Frederick would not do when he might, and since the war began he could hardly be asked to do it; for he could not with honor abandon his post while the enemy were at his gates, except upon conditions for his Protestant subjects more favorable than could be obtained. Now, however, — being a fugitive, without crown, people, army, or ally, — he might without dishonor confess himself beaten and give up the game. By renouncing his pretensions to the Bohemian throne he would at once relieve James from his perplexity, and enable him with a clear conscience to make the recovery of the Palatinate his own cause. And it was upon this express condition that the King now assisted him with money, and prepared to assist him with arms, to recover it; an action in which upon the same condition he expected to have the coöperation of the King of Spain; who still intending Prince Charles to be his son-in-law, would surely never consent to the alienation of his sister's possessions. The winter months gave time for negotiations, which he set on foot immediately; and prepared to meet his Parliament with a declaration that he still hoped to recover the Palatinate by peaceful measures, but meant, if they failed, to go to war for it.

To show the terms upon which two people stand towards each other, there are few things more significant than the manner in which a request is declined. It appears that about this time Bacon desired a favor of the King, which he asked Buckingham to recommend, and that Buckingham wished to be excused. So much seems certain. What the favor was, or how or on what grounds it had been applied for, we are left to gather from the reply. But there can be no doubt, I think, that the favor desired was "the making of a Baron;" that is, the priv-

ilege of naming some one to be raised to that rank and receiving the consideration. It was an ordinary form of reward. Rich men would give large sums for peerages, and the King would occasionally transfer the benefit of the bargain to a servant whom he wished to oblige. There was a rumor about three years before (though I have not met with any confirmation of it) that Bacon himself had received a gift of the kind,<sup>1</sup> and his present suit was doubtless of that nature. It was one which he would naturally make through Buckingham. In what terms he made it we do not know, for neither the letter nor any notice or rumor of the transaction has come down to us: but it may be inferred from the terms of the answer that he asked for it as the reward of service, and cited cases in which others — as namely, the Earl of Pembroke, Lord Arundell, Lord Doncaster, and Secretary Winwood — had been rewarded in the same way. The letter which contains all we know about it is among the Fortescue Papers lately printed for the Camden Society (No. 99), and is a copy undated. It must, however, have been written after Sir William Cavendish was made a Viscount (3 November, 1620) and before the meeting of Parliament in the following January; and is worth reprinting here because it exhibits Buckingham in a character with relation to Bacon in which we have not seen him before.

MY HONORABLE LORD, — I know that to a man of so much nobleness nothing will be so acceptable as sincerity and plainness. And therefore before I move his Majesty in your suit, I will take the liberty of a friend to deliver unto you mine opinion of it. And to begin with that which is within the compass of mine own knowledge, the example you allege of Sir Will.

<sup>1</sup> "The speech goes that he shall be made a Baron, *and hath the making of another given him, to discharge his debts*; which in courtesy he hath offered to his eldest brother for £1,000 less than another would give: which he will not accept; mindful perhaps of his father's motto or posy, *mediocria firna*." Chamberlain to Carleton, 10 January, 1617-18. *S. P.*, vol. xcv., No. 11.

Candish is no more but the prevention of that honor which no man knoweth how soon it may by his own right fall upon him, and only stretched a little higher at the suit of my Lord Chamberlain and my Lord Arundell. That to my Lord of Doncaster was at his Majesty's going into Scotland and upon a consideration whereby he was no gainer, being for buying of hangings to furnish the houses. If Secretary Winwood obtained a Baron it was (as I can assure your Lordship) the only gift his Majesty gave him in reward of long service, and in a time when it was not a matter of such difficulty to get as now it is; when to my knowledge his Majesty cannot endure to hear of making any for his own benefit, notwithstanding the great necessities wherein he is. What the custom hath been for rewarding Chancellors after the Parliament I never heard; but it seems by your letter the last claimed it not. Whatsoever the use hath been after the end of the Parliament, I assure myself your Lordship will hold it very unseasonable to be done before, and likely to do more hurt than good to his Majesty's service (whereof his Majesty hath found no man more careful than your Lordship) if while he is asking with one hand he should be giving with the other.

Having thus freely delivered to your Lordship my opinion, I now leave it to your self whether I shall move his Majesty in your suit or no: wherein I will be ready so to carry myself as I shall be further directed by your Lordship, and as it becometh

Your Lordship's faithful

friend and servant,

G. BUCKINGHAM.

As we hear no more of this matter, I presume that Bacon acquiesced in Buckingham's objections, and said no more about it.

It was unlucky for the special business of this Parliament, which was to provide the government with the means of sending an army to recover the Palatinate, that it coincided with a great scarcity of money and general apprehension of poverty. It could not have been national poverty, because it was caused by the low price of

commodities, and the low price was caused by the abundance of them. But though a country must always be richer for plenty upon the whole, it may be poorer in parts. The course of the markets being disturbed, what was bought dear has to be sold cheap, and the compensating advantages do not show themselves at once or do not find their way into the same pockets which the low prices have left empty. The "farmer that hanged himself on the expectation of plenty" was one of many whom a low price of corn would have made poorer for a time.

"But the difficulty will be," says Chamberlain, writing on the 10th of February, "how and where these supplies should be raised: for it is most certain that England was never generally so poor since I was born as it is at this present; inasmuch as all complain they cannot receive their rents. Yet is there plenty of all things but money; which is so scant that country people offer corn, cattle, and whatsoever they have else, in lieu of rent, but bring no money: and corn is at so easy rates as I never knew it at, 20 and 22 pence a bushel; barley at 9*d.*; and yet no quantity will be taken at that price: so that for all the common opinion of the wealth of England, I fear when it comes to the trial, it will appear as some merchants, which, having carried a great show a long time, when they are called on too fast by their creditors, are fain to play bankrupt. But the strangeness of it is how this great defect should come and be perceived but within these two or three years at most. Divers reasons are devised, as some say the money is gone northward, some eastward, and I know not whither, etc."

Whatever the cause, one of the consequences was clear enough. It was not a time when a House of Commons — as houses of commons were in the early part of the seventeenth century — would like to vote many subsidies. Though the people were impatient for war, and much discontented with the government for maintaining a neutral attitude so long, there is no reason to suppose that any of them had yet considered what the war they wanted would cost. The fighting men of the country (except

the young nobility) had shown no alacrity in following Sir Horace Vere to help in defending the Palatinate the last summer; and it remained to be seen how much alacrity the tax-payers would show in supplying what was needful for an army strong enough to recover it in the coming spring, — or their representatives (who belonged chiefly to the class whom the scarcity of money touched) in exacting it from them.

For the orators and the pamphleteers it was not necessary to know more about the work than that they wished it done. But for the government, it was necessary, before they entered upon it, to consider how it was to be done, and how much money it would require.

On the 13th of January, 1620–21, “his Majesty, having resolved to make some royal preparations for the recovery and protection of the Palatinate, being the ancient inheritance of his Majesty’s son-in-law and grandchildren, did in his high wisdom think meet to appoint some persons of knowledge and experience in the wars, to consider and advise on such propositions as should be made them from the Board for the better expediting that service.” The commissioners were to prosecute their consultations without intermission or delay, and report in writing under five of their hands, first, what number of men, horse, etc., would be sufficient; secondly, by what time they must be in readiness, and how provided. On the 11th of February they reported to the Council that the total charge of raising and setting forth an army of 25,000 foot, 5,000 horse, 20 pieces of artillery, etc., would rise to £258,370; and the expenses of transport, ammunition, wages, and provisions, to £76,064 17s. 8d. monthly.

Now the largest sum collected in any one year by Parliamentary grant since the beginning of the century had been £188,883. That was in the last year of Elizabeth. The largest collected during the present reign had been £145,762. And now it appeared that if the Palatinate

was to be recovered by a conquering army, it would be necessary to provide during this year not less than a million. It is true that the people had had a long rest from Parliamentary taxation; and that if during the last ten years every man had laid by annually a sum equal to his share of a single subsidy with its two fifteenths, they would have had no difficulty in meeting the demand.<sup>1</sup> But no man is better disposed to pay a tax because he has not been used to it; hardly any man is better able. What the tax-collector does not call for, men treat as their own, and learn to want it for themselves. The people were eager for the restoration of the Palatinate to the King's son-in-law and grandchildren. True: but were they prepared to pay a million for it out of their own pockets within the next twelve months? This was the question to be tried; and it was probably judicious in the government to announce their choice of the most effectual of the three courses from which they had to choose: because if the zeal of the Commons fell short of what was wanted for the first, the second or the third would still be open: whereas if the Commons should prove to be earnest enough in pursuit of this one object to forget or suspend their other differences with the Crown till it were accomplished, the improved relation between the two would so raise the credit of the government in the money-market, that what was wanted for the first might probably be obtainable: for if sufficient security could be offered, the money would, no doubt, be forthcoming; and it was but fair that the future should share the burden of defending its own inheritance. But the experiment was a very doubtful one at best: and Bacon was not destined to preside at the Council Board long enough to assist in the guidance of it — which might possibly have made a difference.

<sup>1</sup> Sir Julius Caesar stated in the House of Commons in February, 1620-21, that one subsidy came to about £82,000, and one fifteenth to £29,000. See *Proceedings and Debates*, vol. i., p. 49.

For the present, however, his personal fortunes were at their highest, and never seemed more secure. During the last two years he had been rapidly gaining upon the opinion both of the King and Buckingham, his counsels were better listened to than they had ever been before, and as the case became more difficult their value seemed likely to be better understood. One or two complaints against him from aggrieved suitors had been referred to the rest of the Council Board for examination, and left no blemish upon his name. He had been building by the fish-ponds at Gorhambury a retiring-place for study and recreation, — “the most ingeniously contrived little pile,” says Aubrey, “that ever I saw;”<sup>1</sup> in the design, arrangement, and decoration of which he had freely indulged all his tastes; as looking forward to the time when, having seen the King out of debt and in harmony with his Parliament, he should be free to exchange the active for the contemplative life, and devote his remaining years to the prosecution and exposition of his philosophy. Ben Jonson celebrated his birthday in lines breathing of nothing but reverence and honor. And the King, to show the value he set upon his services, raised him a step higher in the peerage. On the morning of the 7th of January, Camden and Norroy King-at-Arms had been sent for to consult about the arrangements for his investiture with the title of Viscount St. Alban, which was to be presently bestowed upon him with all the solemnities.

On the 16th of January, the meeting of Parliament was prorogued to the 30th, probably to give time for the deliberations of the Council of War; and Bacon in the interval sent to the King through Buckingham, what I suppose to have been some memorial (like that which he submitted to him in 1614) of the communication to be made to the two houses on their assembling. We know

<sup>1</sup> *Lives*, vol. ii., part 1, p. 229.



that when in 1615, he wanted him to try another Parliament, he advised him to confine his own opening speech to a declaration of the causes which had moved him to assemble them, together with "some princely and reserved description of the affairs of Christendom at the time;" leaving the Lord Chancellor to deliver any admonitions that might be required as to the government of their own proceedings. The case being now almost exactly the same, he would probably give the same advice: and we have evidence (which will be seen presently) that he did at one time expect that it would be so arranged: — that the King was to declare the causes for which they were called together, leaving it to him to say whatever might be expedient about their proper functions and duty. It was to this arrangement, I imagine, that the paper referred to in the next letter as "the enclosed" had reference. It may have been a suggestion of what the King should say, or an account of what he proposed to say himself, or both. But I have not found any traces either of it or of the letter which accompanied it; and all that we can safely conclude about it is that the arrangement which it proposed or assumed did not exactly suit the King. He meant in his own speech to deal with both points, — the functions of Parliament generally, as well as the special business of this.

#### TO THE LORD CHANCELLOR.

I have acquainted his Majesty with your letter and the enclosed; who commanded me to return yo<sup>r</sup> Lp. this answer. That the matter which his Majesty hath been thinking upon for his speech concerneth both the points, of the institution of a Parliament, and of the end for which this is called; yet his Majesty thinketh it fit that some extract may be made out of it, which needeth to be but very short, as his Ma<sup>ty</sup> will more fully show you at his coming back to London, and so I rest

Your Lp's. most faithful friend and servant,

G. BUCKINGHAM.

“On Saturday” says Chamberlain, writing on the 3d of February, “the Lord Chancellor was created Viscount St. Alban’s, with all the ceremonies of robes and coronet, whereas the rest were only done by patent.” And if the only thing to be set off against the favor was a difficulty the King found occasionally in understanding the “*Novum Organum*”—and it is all we hear of—we need not suspect of insincerity the letter in which he expressed his grateful sense of obligation.

#### TO THE KING.

MAY IT PLEASE YOUR MAJESTY, — I thank God that I number my days both in thankfulness to Him, and in warning to myself. I should likewise number your Majesty’s benefits, which as (to take them in all kinds) they are without number; so even in this kind of steps and degrees of advancement, they are in greater number than scarcely any other of your subjects can say. For this is now the eighth time that your Majesty hath raised me.

You found me of the Learned Counsel, Extraordinary, without patent or fee; a kind of *individuum vagum*. You established me, and brought me into Ordinary. Soon after, you placed me Solicitor, where I served seven years. Then your Majesty made me your Attorney or Procurator General. Then Privy Counsellor, while I was Attorney; a kind of miracle of your favor, that had not been in many ages. Thence Keeper of your Seal; and because that was a kind of planet and not fixed, Chancellor. And when your Majesty could raise me no higher, it was your grace to illustrate me with beams of honor; first making me Baron Verulam, and now Viscount St. Alban. So this is the eighth rise or reach, a diapason in music, even a good number and accord for a close. And so I may without superstition be buried in St. Alban’s habit or vestment.

Besides the number, the obligation is increased by

three notes or marks. First, that they proceed from such a King; for honors from some Kings are but great chances, or counters set high; but from your Majesty they are indeed dignities, by the coöperation of your grace. Secondly, in respect of the continuance of your Majesty's favor, which proceedeth as the divine favor from grace to grace. And, thirdly, these splendors of honor are like your freest patents, *absque aliquo inde reddendo*. Offices have burdens of cares and labor; but honors have no burden but thankfulness, which doth rather raise men's spirits then *accable* them or press them down.

Then I must say, *quid retribuam?* I have nothing of mine own. That that God hath given me I shall offer and present unto your Majesty, which is care and diligence and assiduous endeavor, and that which is the chief, *cor unum et viam unam*, hoping that your Majesty will do, as your superior doth; that is, that finding my heart upright, you will bear with my other imperfections. And lastly, your Majesty shall have the best of my time, which I assure myself shall conclude in your favor, and survive in your remembrance.<sup>1</sup> And that is my prayer for myself. The rest shall be in prayers for your Majesty.

On the 30th the Houses met, and the King made his speech; one of his best speeches, and not the worse in my opinion because he reserved the weightiest matter for the last place, — the best way (generally speaking) to make it impressive.

He began by reminding them of the reciprocal obligations of King and Parliament. They were called for advice. It was the King's business to make laws; theirs

<sup>1</sup> This sentence had been originally written thus: "Which is a joyful heart, a studious thought, an incessant endeavor, and the best of my time, which I hope shall conclude with your favor and service in your remembrance." These words were then crossed out and the conclusion in the text substituted.

"to advise him to make such as were good for the commonwealth." "The Commons best knew the particular estate of the country; and if the King asked their advice could best tell him what was amiss; or else petition him to amend and redress it." It was also their duty to "offer what they thought fit to supply his wants;" while it was his duty "in lieu thereof to afford them justice and mercy."

He then proceeded to explain why they were called together now. It was not to make new laws against the Catholics; those they had already were severe enough. In dealing with matters of conscience, persuasion was fitter than compulsion; and they need not fear any danger to Protestantism from the marriage-treaty with Spain. "He would do nothing therein which should not be honorable and for the good of religion; and if anything broke off the match it should be the cause of religion."

He had called them for help in two main causes, his want of money, and the distracted state of Christendom.

The supplies granted to the late Queen during her later years "grew to an annual contribution which by computation came to £135,000 a year;" whereas during the eighteen years he had reigned he had not had more than four subsidies and six fifteenths.<sup>1</sup> And it was now ten years since he had troubled them for any. And though it might once be said that it was useless to supply him with treasure because it was so ill kept, it was not so now. During the last two years he had been laboring to reduce his expenditure, and had succeeded in making considerable abatements. "In his household expenses he had abated £100,000 per annum; in his Navy expenses £28,000 per annum; and hoped shortly to abate £10,000 more. In his ordinary he had brought his expenses from £34,000 to £14,000."<sup>2</sup>

<sup>1</sup> About £502,000 in all; giving an average of about £28,000 annually.

<sup>2</sup> So the figures are given in *Proceedings and Debates*. But they are given very differently in different reports, and cannot at all be relied upon.

For the distraction of Christendom he was not responsible. When the quarrel between the States of Bohemia and the Emperor began, he had been requested by both sides to make an agreement between them, and the embassy which he had sent for that purpose had cost him £30,000. But in the mean time the States had cast off all allegiance, and chosen his son-in-law; who, though he sent to him to know whether he should take the crown or no, did not wait for his answer; but within three days took it on his head. After which, he had abstained hitherto from all interference; partly because he had always held it wrong to depose Princes on account of religion; partly because he was not well enough acquainted with Bohemian law to judge between the parties; partly because he had undertaken the office of a mediator. But now the Palatinate, which was the inheritance of his grandchild, was invaded, and he was determined to recover it. He hoped to do so by peaceful negotiation; but he could negotiate with greater advantage if he were known to be prepared for war. And if negotiation failed, he was prepared to spend his crown, his blood, and his son's blood also in this quarrel. But in this nothing could be done without a speedy supply. *Bis dat qui cito dat.* He hoped they would not fail him now more than they had done his predecessors, but let it be seen that the King and his people were of one mind. He was ready to hear and redress all complaints; and whatever was amiss, "if truly informed, he would rightly reform." He had called them of his own free motion, and his trust was in their good offices for the good of his estate.

The speech was very well received by the Commons, who showed a manifest desire to keep on good terms with him. On the 5th of February, the very first day of the session, the case of the Palatinate having been explained to them, and a speedy supply recommended, the question

was referred to a committee of the whole House: on the 16th a unanimous resolution for a grant of two subsidies was reported; and a bill for the purpose being presently drawn went smoothly through all its stages, and received the royal assent on the 22d of March.

This vote was of great value, as far as it went. It showed unmistakably that the King and the Commons were friends for the present, and wished to continue so. But the announcement of the resolution had been accompanied with an intimation, which, though intended to make the gift sweeter, might well suggest to those who had watched the course of former Parliaments some misgivings and alarms. In the debate of the 5th of February, Sir G. Calvert, now Secretary of State, had described the condition of the Palatinate, and stated how large a force would be required, but does not appear to have offered any estimate of the cost: for the report of the Council of War upon that point had not then been sent in. It was not till the 15th that the Committee of Supply heard how much money would be wanted. They were then told that the maintenance of such an army would require £500,000 per annum at the least: which was more than six subsidies would come to. In presence of this fact a vote of two subsidies required some explanation; and it was given by Coke in reporting from the Committee to the House. "There was given," he said, "a free gift of two subsidies: which were given, none gainsaying, and freely: *not on any consideration or condition for or concerning the Palatinate.*"

Now, though this may have been meant only to excuse the smallness of the sum (about £164,000),—implying that they knew how insufficient it was for the recovery of the Palatinate, and only offered it as a provisional advance, while the means of raising an adequate supply were under consideration,—yet what it did really imply was, that upon the question of raising and supporting

an army for the recovery of the Palatinate they made no *engagement* whatever.<sup>1</sup> And though there might be color for delay in the fact that negotiations were still going on with hopes of a peaceful arrangement, it was forgotten that the advantage in a negotiation for peace of being known to be prepared for war — of “making peace with a sword in his hand,” as the King put it — was thereby lost. A provisional vote of £164,000 carried with it no security that a vote of three times the sum might be counted on when it was wanted. And since a Committee of Grievances had been appointed on the same day with the Committee for Supply, judicious advisers of the Emperor and the King of Spain would no doubt report that they might negotiate at leisure, without any fear of being interrupted by the sudden arrival in the Palatinate of a well-equipped army from England.

The gift was nevertheless received with grateful acknowledgments, as an earnest of the zealous and liberal coöperation which would be forthcoming when wanted : and the House in the mean time went on with its other business.

One of their first proceedings must have given Bacon great satisfaction. One of his favorite measures was advanced a step. On the 15th of February, upon a report from Mr. Hackwill of what had been done (by direction from the King and the Lords of the Council, upon the “advice of the now Lord Chancellor, Lord Treasurer, and Lord Hubbard”) in surveying the statutes ; and how they had found “almost 600 fit to be repealed, as snaring ;” seven principal lawyers, including Sir Edward

<sup>1</sup> A private news-writer represents them to have added that “if his Majesty by treaty could not recover the Palatinate, they offered their life and goods for the recovery thereof by force.” T. Murray to Carleton, 17 Feb. 1620. *S. P.*, vol. cxix., No. 101. But though the words may have been used, it does not appear that any record was made of them, and therefore they could have no binding force.

Coke, were appointed "to join with Mr. Noy, Mr. H. Finch, and Mr. Hackwill" (the commissioners who had been set on work by the King), "to survey all the statutes, and to draw all the statutes concerning one matter into one plain and perfect law; and to consider which were fit to be repealed, which in force, and which fit to be continued." This was in effect the very measure which Bacon himself brought in in 1614, as one of the bills of grace; which, after the abrupt dissolution of that abortive Parliament, he urged the King to proceed with by commissioners: and in which he reported two years after, that "a great deal of good pains" had been taken by himself and others, so that the work was "already advanced," and in a condition to be taken up by Parliament, and entrusted to commissioners to be named by the two Houses. The present proceeding was merely the appointment of a Select Committee to report upon the subject; but it was the first step towards "the compiling and amendment of the laws of England," which in his political aspirations held, I think, the place of first importance.

They were busy at the same time with another matter which interested them much more, and which he, probably (though the part assigned to him was gratifying as a proof of personal confidence), would have been better content to let alone. This was a petition to the King "for the better execution of the laws now in force against the Jesuits, Seminary Priests, and Popish Recusants;" with which the Lords were requested to acquaint the King, and obtain leave of access for the purpose of presenting it and hearing his answer. The King consented to receive it on Saturday, the 17th, and on Friday the two Houses met in conference to settle their form of proceeding: the result of which was that Bacon was chosen to speak for both; which he did: and on Monday reported to the Upper House what had passed.



“His Lordship’s relation was brief (as he said): as well because most of all their Lordships were then present, and principally for that his Lordship knew, and willingly acknowledged, he was no way able in any degree to deliver it in such sort as his Majesty spake.”

This is all we find about it in the Lords’ Journals. From those of the Commons we only learn that his report was repeated to them and delivered in writing at their request. But one of Carleton’s correspondents supplies the following brief account:—

“This day both the Houses conjunctly are to move his Majesty, —

“1. That according to the statute, all Recusants may be commanded by Proclamation to retire from London ten miles during the Parliament.

“2. That through all England they may be confined within five miles about their houses.

“3. That they be not suffered to have any arms about their houses but for their personal defense.

“4. That none shall resort to ambassadors’ houses for the hearing of masses.

“5. That no Jesuits or Priests which are in prison shall be licensed to go abroad, and that none shall resort to them, and that they shall be restrained from the saying of masses.

“This afternoon his Majesty is to declare his pleasure on these five points. . . .

“After I had ended, the two Houses did attend his Majesty. And for them both my Lord Chancellor was speaker to his Majesty. Leaving compliments, he did propone the five points or branches concerning religion contained in this letter, adding the desire that the sessments upon Recusants’ lands might be duly made and executed.

“His Majesty did agree to all the points in substance. Only he did say that a Proclamation was unnecessary, the statutes of the Kingdom providing for the same. He did undertake by the advice of the Council to see the execution performed. He did also desire them to provide that Papists’ children should be bred in our religion.”

At the next conference between the two Houses Bacon's part was not so fortunate. The Committee for Grievances had fallen upon the Monopolies; an action which had been clearly enough foreseen, and which Bacon himself had wished to avoid by taking away the most unpopular of them before Parliament met. The manner in which he would have had this done is fully explained in a letter to Buckingham, signed by himself, Montagu, Coke, Hobart, and R. Crew, of the 29th of November, 1620, the end being to get rid of them all: in some cases by anticipating the attack, and revoking the patents, as found by experience to be mischievous, before they were complained of; in others by waiting for the complaint and readily yielding to it; but not in any case to insist on upholding them against the current of opinion. And though the classified list which accompanied the letter has not been preserved, we happen to know that it included those two which drew the first fire, and did most to drive the Commons into a course and a temper fatal to harmonious coöperation in the business for which they had been called; and that, if his advice had been taken, those two Patents would have been already numbered among grievances past and redressed. It appears from a private letter which he wrote to Buckingham on the same day (29 November, 1620) that both Monperson's Patent touching Inns, and Christopher Villiers's Patent touching Recognizances of Ale-houses, were among those set down as "likely to be stirred in by the Lower House of Parliament," and which it would be better for him "to take the thanks for ceasing than the note for maintaining." The King referred the question to the Council Table, where Bacon argued strongly for revoking Patents of that class by act of Council at once. But he was out-voted, and had to acquiesce in a resolution which he evidently thought unwise. Such Patents were to remain for the spirit of complaint to play upon and be ap-

peased by their surrender. The King was to be represented as having been misled by his advisers, and quite ready to correct the error the moment he was informed of it. But the thanks for informing him were to go to the House and not to be anticipated by the Council. And it was true, no doubt, that in some cases a livelier gratitude may be excited by taking a burden off than could have been got by avoiding to lay it on. Bacon could not have forgotten a splendid and successful performance of that kind in the last years of Elizabeth. But neither could he have forgotten that both the times and the persons were changed. Elizabeth herself could not have acted that part with applause to the present audience, and would not have attempted it. But the experiment was to be tried, and the occasion was not long in coming.

As early as the 6th of February a debate on the causes of the scarcity of money, which the King had recommended for consideration, brought up a complaint of the Patent for Gold and Silver Thread. It was an old Patent, with a long history, which had passed through several hands, undergone many references and modifications, and though much complained of by rivals in the manufacture, had never stood high in the list of public grievances; but it was now in the hands of Sir Giles Monperson, — a man whose proceedings in regard to another Patent which had no relation to it had caused great discontent; and I suppose it was felt to be the beginning of the war, and the time for the government to take up its position. Sir Edward Sackville, who, though anything but a Puritan and no way unfriendly to the government, appears to have stood high in the favor of the House, indicated that position at once, and very clearly.

“Sir Edward Sackville saith, that in all businesses of this nature and weight there is commonly a petition and other notes and collections delivered to his Majesty, pretending a good and

benefit that by this suit will accrue both to his Majesty and to the Commonwealth; the consideration of which petition, and other collections concerning such businesses, his Majesty ever referreth to some certain referees, who examine it and certify to his Majesty the validity of it. He therefore desireth that those who were referees in this business and have certified his Majesty of the conveniency of it, and have thereby so much abused his Majesty and the Commonwealth, may be known, and that their reasons may be examined, to the end that they may receive the blame and shame of it."

The debate for that day ended in a resolution "that those motions be referred to the former Committee of Grievances;" but we hear no more of this one for a good while: a much stronger case against Monperson having been brought out by the investigation. On the 19th of February the Patent for Inns was brought in question by Mr. Noye, as an instance of a Patent that was "in itself good and lawful, but abused by the Patentees in the execution, who perform not the trust reposed in them from his Majesty." The same character was given of it by Coke in the same debate. "There are three sorts of patents. 1st, directly against law: 2d, good in law, but ill in execution: 3d, neither good in law nor execution. . . . *Of the second kind are patents for Inns.*" On the 20th the committee went into the case. There were three patentees, of whom Sir Giles Monperson was the principal; who being examined, stated that "there were two things that gave him encouragement to undertake this business: 1st, the want of power in Justices of Peace to set up or pull down inns: 2. The course that was taken before the Patent was granted; it being referred first for matter of law to the Lord Chancellor that now is, then being the King's Attorney General: to the Lord Chief Baron of the Exchequer: and Justice Nicolls; the second time, for matter of conveniency, to Suffolk, then Lord Treasurer of England, to Secretary Winwood, Sec-

retary Lake, and Serjeant Finch." The next day Coke reported from the Committee that they found this Patent an exorbitant grievance both in itself and in the execution; and the same afternoon the Patent "for the forfeiture of the Recognizances for Ale-houses," in which Sir Francis Michell was implicated, came before them. This Patent had been referred to the two Chief Justices (Montague and Hobart), Yelverton, and Coventry, or any two or more of them. "The Lord Hobart" (it was added) "did not certify on this reference; but the Lord Chief Justice Montague did; *but it was no more than the House thought good and honorable.*" So the attack turned against the execution, and the person principally implicated in it, — which was Sir Francis Michell, a lawyer and Justice of the Peace. With him they made very short work: and if the universal condemnation of a man without hearing what he has to say in his own behalf is to be accepted as conclusive evidence against him his case was very bad. On the 22d Coke reported it to the House, and on the 23d, after reading a petition from him, moved "that he was unfit to be a Justice of Peace; and that he should be declared to be unworthy and disabled to be of that commission: that he should make restitution to all of whom it could be proved that he had received anything for this business: that he should be sent to the Tower until he be put out of commission, and until he should make an humble submission here at the Bar on his knee." And (the House assuming thereupon the authority of a Court of Justice) it was ordered, upon the question, by a general voice, —

"That he should be held unworthy to be a Justice of the Peace, and be declared disable and unworthy to be of that commission or any other whatsoever. To be sent at 2 of the Clock in the afternoon to the Tower through the street on foot."

After which the private Journal (for the Clerk of the House was ill all this time, and the usual notes were not taken) proceeds thus: —

"And so Michell was called to the Bar to hear his sentence on his knee. After sentence passed he desired to be heard, but it was denied.

"*Mr. Chancellor of the Duchy*: That he might be heard after judgment, so as it be an humble suit, or anything *not concerning the sentence given by the House*.

"*Sir Edward Cooke*: That he ought not to be heard after judgment.

"And so it was agreed by the vote of the whole House."

Michell's petition, to which this was the answer, had been (if the note of it be correct) short, sharp, and defiant. Monperson, whose manner of executing his Patent for Inns and Hostelries had exposed him to the same kind of censure, took warning from the result, and tried whether in this new Court of Justice,—where anybody was counsel for the prosecution, and the "general voice" was the Judge, and the defendant heard nothing of the trial except the sentence, upon which he was not allowed to make any remark,—an attitude of humility would fare better: and the next morning there was read in the House

"The petition of Sir Giles Monperson. Wherein he confesseth that he hath erred in the execution of the Patent for Inns, both by his letters and otherwise to Justices of the Peace; and confesseth that so general a Patent cannot but be a great grievance to the subject; and prayeth the favorable construction of the House, to whose censure he willingly submitted himself."

This petition was referred, I presume, to the Committee, whose report on the case was brought up by Coke on the 27th. On which occasion he laid down another rule for their proceeding as a Court of Justice which must have been rather alarming to all who might come within their jurisdiction.

"If any one accused for a grievance do justify it in this House of Parliament, it is an indignity to the House, and for this the House may send any one to the Tower."

So at least the words are given in the private Journal. But I gather from the notes taken by the Clerk of the House (who had resumed his duties the day before) that it was meant not so much for a rule to guide their proceedings hereafter as for a doctrine invented to justify what they had done two or three days before. A doubt had been raised as to their right to pronounce judgment upon Michell and commit him to the Tower, for offenses which were not against the House, and had in fact been committed when there was no House in existence. Coke's reply (on the sudden) was in effect that he had committed an offense against the House then sitting. Being charged with that which they had voted a grievance, he had presented a petition in which he justified it. This was a punishable offense. A case in point had occurred when he was Speaker. A deputy purveyor was charged in that House with many grievances, done before Parliament: and it was resolved that if, being sent for, he should defend what he had done, "for his defense he was to be there punished." "Michell came in as a counsellor and justified it, and his petition was arrogant and presumptuous." As it appeared by the question that the law of the case was not known to everybody, he added that he would "set this out at large and deliver it to be kept for a memorial in this House:" which may account for its being entered in the private Journal in a separate paragraph by itself, as a legal axiom. In order, however, to set it out in proper form he felt that "further advice" would be desirable; and it seems the House thought so too: for it was presently agreed on the motion of Sir Edwin Sandys that Noye and Hackwill should go that afternoon to the Tower and search the precedents there, — "to show how far and for what offenses the power of this House doth extend to punish delinquents against the State, as well as those who offend against this House;" and having first informed

the Committee, should report to the House the next morning. The truth was, they had discovered that they did not know what the proper course of proceedings in such cases was; for their present course, now that it was brought out in full relief, could hardly approve itself on "further advice" even to Coke himself.

Pending the search for precedents the debate turned again upon the point originally raised by Sir Edward Sackville—the examination of the Referees. "Here," said Sir Lionel Cranfield, now Master of the Wards, "is a projector and a patent: he had had no patent if the Referees had done their duty: to remember therefore the Referees and so to clear the honor of the King: to have the original petition, answer, and certificate reviewed." The House approved. Monperson was forthwith brought to the Bar and questioned as to the Referees for the Patent of Inns. His answers were simple, direct, and unreserved. It had been referred for matter in law to the Lord Chancellor, the Lord Chief Baron, Justice Crooke, Justice Nicolls, and after his death to Justice Winch: and for the point of conveniency, to the Earl of Suffolk (then Lord Treasurer), Secretary Winwood, Secretary Lake, and Mr. Serjeant Finch. Having given them the information they wanted, he was dismissed with a direction from the Speaker to attend the pleasure of the House every forenoon: and so the business of that day ended.

But it left behind matter for serious consideration. They wanted to condemn the Patents without touching the King. The obvious way to do this was to throw all the blame upon his advisers. It was the old way; and in this case it was not unjust. Before he granted the Patents he had taken all the care he could to ascertain that they were both lawful and convenient. He had asked those who ought to have known best, and they had told him that they were. If they were not, the blame



was not his, but theirs. So far, speaking for themselves as in a matter of opinion, there need be no difficulty. So much was of necessity implied in a petition for the revocation of the Patents as grievous and illegal: and if they should add to it the expression of a hope that he would call those advisers to account for thus misleading him, there would be no difficulty in that. But when it came to "questioning" and "examining" and "reporting" the Referees, — to putting them upon their trial, deciding upon their guilt or innocence, and awarding their "punishment," — the difficulty became considerable. For who were to be their Judges? They were a formidable body to attack, standing all together; and without denying that they were answerable for their advice, might decline to answer before this new tribunal, which had just announced that if they presumed to "justify" what they had done, they would be treated *ipso facto* as delinquents, who might be sent to the Tower at once without more ceremony than a question put and a majority of yeas. A few days' leisure for reflection made a considerable difference in the opinion of the more thoughtful members. On the 5th of March, Sir Dudley Digges, a principal member of the Committee, after remarking how gracious the King had shown himself in all these things, and how great care he had taken, moved for —

"A short bill to be drawn expressing in the preamble the King's great care against all things that might hurt the commonwealth.

"2dly. A declaration against all projectors.

"3dly. Against all Referees that shall hereafter mislead the King, that they may be branded to posterity."

And the motion was supported by Sir John Walter, with some additions : —

"To look forward, the best means to help us. A bill to be drawn as moved by Sir D. Digges. To have all the Patents

called in and suppressed : none to be granted hereafter : and if they do, to be void. For hereafter, all procurers, advisers, or countenancers thereof, to incur *Præmunire*. To send to the Convocation House to draw a curse against all these : But not to look back to the Referees, whereby we may draw opposition and a crossing of the proceedings for hereafter."

Six members were named "to draw the Bill mentioned by Sir John Walter ;" and though the House seems to have resolved that "the Referees as well as the projectors of the patents should be questioned by the Committee," it was clear that the Committee by this time knew better what they were doing.

For in the mean time Noye and Hackwill had returned from the Tower with their precedents, and disclosed to them the fact that they had no power whatever to deal judicially with persons accused of offenses against the state — whether Projectors or Referees, or with any that were not offenders against their own house : and had reported it as "the opinion of the Committee that they must join with the Lords for the punishing of Sir Giles Monperson ; it being no offense against their particular House, or any member of it, but a general grievance ;" and that "a message should be sent to acquaint their Lordships that they had discovered matters and offenses tending to the wrong of his Majesty in his justice, honor, and estate ; to the disinheritation of his Majesty's subjects, and the corruption of the Commonwealth ; and this by a man of quality ; and therefore they thought fit to pray a conference with their Lordships."

This was on the 28th of February ; and the King, having received intelligence of it, wrote immediately to Bacon to warn him of what was coming, and direct him to consult with the Prince and the Lord Treasurer as to the way it should be met. This we learn from the following letter to the King ; written not on the 8th of

March (as Birch dated it—a date which would make it impossible to find a place for it in the story),—but on the 1st, which explains how it happened that the message recommended by the Committee (which had been immediately approved by the House, and the messenger appointed) was not received by the Lords till the 3d.

TO THE KING.

IT MAY PLEASE YOUR MAJESTY,—I received your Majesty's letter about midnight. And (because it was stronger than the ancient summons of the Exchequer, which is, *sicut teipsum et omnia tua diligis*; whereas this was *sicut me diligis*) I used all possible care to effect your Majesty good will and pleasure.

I sent early to the Prince, and to my Lord Treasurer, and we attended his Highness, soon after seven of the clock, at Whitehall, to avoid further note.

We agreed that if the message came we would put the Lords into this way; That the answer should be that we understood they came prepared both with examination and precedent; and we likewise desired to be alike prepared, that the conference mought be with more fruit.

I did further speak with my Lord of Canterbury, when I came to the House (not letting him know any part of the business), that he would go on with a motion, which he had told me of the day before, that the Lords' House mought not sit Wednesday and Friday, because they were convocation days, and so was the former custom of Parliament.

As good luck was, the House read two bills, and had no other business at all. Whereupon my Lord of Canterbury made his motion, and I adjourned the House till Saturday. It was no sooner done, but came the message from the Lower House. But the *consummatum-est* was past, though I perceived a great willingness in many of

the Lords to have recalled it, if it mought have been. So with my best prayers for your Majesty's preservation, I rest

Your Majesty's most bounden

and most devoted servant,

FR. ST. ALBAN, Canc.

Thursday at xi of our forenoon.

At the same time that the Commons resolved to send their message, they directed Sir Giles to remain with the Serjeant-at-arms, who was required to keep him carefully at his peril. But before Saturday came, Sir Giles (taking advantage of his keeper's good manners, who did not like to follow him into his wife's closet) escaped through the window. So the message had to be supplemented with a request for help in catching him. The Lords were quite conformable in all points: everything was at once done that could be thought of for the arrest of Sir Giles and the securing of his papers; they would be ready to meet them in conference on Monday; and being told that they could not be ready before Thursday, replied that Thursday would do as well.

The intervening days were spent in busy preparation, — examining witnesses, hearing counsel, debating points of law and order, considering how far the Referees should be meddled with, arranging the parts, and hearing from Coke an exposition of the judicial powers of Parliament — upon which he was now very learned. On Tuesday it was concluded that the parts should be thus distributed: Sir Dudley Digges to make the introduction; the Patent of Inns to be entrusted to Thomas Crew, with Noye and Glanvyle to assist: the Patent of Gold and Silver Thread to Mr. Recorder (Heneage Finch), with Brooke and Mallett: the patent of Concealments to Hackwill, with Pym and Cooke: Sir Edwin Sandys to follow with "a general aggravation, amplification, or re-

collection : " while Sir Edward Coke was " to justify the proceedings by precedents, to lay open the remedy, and the way for the punishment, and to make the conclusion."

On Wednesday, the 7th of March, Bacon — at whom the blow was really aimed — wrote to Buckingham

TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — With due thanks for your last visit. This day is a play-day with me.<sup>1</sup> But I will wait on your Lordship, if it be necessary.

I do hear from divers of judgment, that to-morrow's conference is like to pass in a calm, as to the referees. Sir Lionel Cranfield, who hath been formerly the trumpet, said yesterday, that he did now incline to Sir John Walter's opinion and motion not to have the referees meddled with, otherwise than to discount it from the King ; and so not to look back, but to the future. And I do hear almost all men of judgment in the House wish now that way. I woo nobody : I do but listen, and I have doubt only of Sir Edward Coke, who I wish had some round *caveat* given him from the King ; for your Lordship hath no great power with him : but I think a word from the King mates him.

If things be carried fair by the committees of the Lower House, I am in some doubt whether there will be occasion for your lordship to speak to-morrow ; though I confess I incline to wish you did, chiefly because you are fortunate in that kind ; and, to be plain, also for our better countenance ; when your Lordship, according to your noble proposition, shall show more regard of the fraternity you have with great counsellors than of the interest of your natural brother.

Always, good my Lord, let us think of times out of Parliament, as well as the present time in Parliament, and let us not all be put *es pourpoint*. Fair and moder-

<sup>1</sup> Being Wednesday, when the Lords did not sit.

ate courses are ever best in causes of estate ; the rather, because I wish this Parliament, by the sweet and united passages thereof, may increase the King's reputation with foreigners ; who may make a far other judgment than we mean, of a beginning to question great counsellors and officers of the crown, by courts or assemblies of estates. But the reflection upon my particular in this makes me more sparing than perhaps, as a counsellor, I ought to be. God ever preserve and prosper you.

Your Lordship's true servant all and ever,

FR. ST. ALBAN, Canc.

March 7, the day I received the seal, 1620.

The conference took place according to appointment, the committee on each side being the whole House ; which accounts for the fact that there was no report, and therefore in the Lords' Journals no notice at all of the proceeding. But from the debate which took place the next day in the Commons, we may gather that Bacon had been rightly informed as to the line which would probably be taken with regard to the Referees by the spokesmen generally, and also that he had rightly divined the exception. Though there was nothing said about them in the arrangement of the parts as recommended by the Committee of Grievances and approved by the House, it seems to have been generally understood that each speaker in setting forth the grievousness of his Patent should name the men to whom it had been referred, and who had informed the King that it was lawful and expedient. And great was the disappointment when one after another concluded his part without naming anybody.

"Thomas Crew," says Chamberlain, "Heneage Finch the Recorder, and Mr. John Nevill,<sup>1</sup> came so short in their task that they are generally decried and thought to prevaricate, not

<sup>1</sup> A mistake, I suppose, for Mr. Hackwill.

daring to touch matters to the quick concerning the Referees. Which Sir Edward Coke, who came next them, perceiving, spared not (besides his own part) to lay open; desiring their Lordships not to conclude anything upon this conference, till they heard further. Sir Edwin Sandys, whose part was to aggravate upon all the premises, did likewise but lamely, which he excused the next day by reason these three before named had given him so little matter to work on."

The motives for the reticence of those three may have been many, but that which they alleged in excuse seems sufficient. They did not know, except by hearsay, who the Referees were, or what they had certified. Coke probably did know; having been one of the councillors commissioned to consider what should be done about these Patents by way of preparation for Parliament—that is, to avoid an attack upon them by the House of Commons or make it pass with least danger of a quarrel with the government. At that time—now three months ago—he must have known, or had the means of knowing, everything that was material about all these Patents, so far as the government was concerned with them; for whatever fault there was in passing them, and therefore in certifying that they were fit to pass, had been already committed. And this knowledge made him all the more formidable in his new position. Since he was restored to his place at the Council Board in 1617, he had borne himself like a stout Privy Councillor, and we hear of no more disputes with the King—not even when the measures to be taken with a view to the coming Parliament were in question. What passed at the table indeed we do not know; but from all the evidence that remains, positive and negative, I should infer that in these matters he agreed with Bacon, up to the 29th of November; at which time, or soon after, a great change took place in his position. His ruling passion had always been the assertion and enforcement of the authority of his own

office for the time being. While he was a Privy Counsellor, and nothing else, his power was in proportion to the power of the King in Council, and no man set it higher. As soon as the electors of Liskeard chose him for their member, his power was in proportion to the power of the Lower House of Parliament; which it accordingly became his duty to magnify and enforce. An immense promotion! There is a story that when some one advised James early in that session "to take down the Lower House a little," he replied (being at the time in a very good humor with them on account of the subsidy just passed) that he was but one King, they were four hundred, and every one a King; and therefore he would let them alone. Coke had suddenly risen from being the servant of the one King to be the ruler of the four hundred; and though just now very gracious and complimentary to his former master, was no longer to be "mated" by any *caveat* from him. But what had become known to him in the confidence of the Council Chamber his oath of secrecy forbade him to reveal without leave; and if of his own knowledge he could have said who the Referees were and what they certified, he did not communicate it, as of his own knowledge, either to the Committee or to the House. The only evidence which could have been produced at the Conference was the verbal statement of Sir Giles Monperson in one case, and of Sir H. Yelverton in the other.

The alleged excuse therefore for omitting to name the Referees seems sufficient; and I cannot find either in the private Journal or the Journals of the House that any sufficient answer was given to it. Both Coke and Phillips made observations, and repeated the statements of Monperson and Yelverton; but, as far as I can make out, they offered no proof beside. And indeed Coke (who spoke so much more indulgently than usual that he almost withdrew the charge which he had himself



made) seemed by implication to admit that they had no other proof. But we know what a high value (as evidence) he always claimed for a confession by which the confessant is himself incriminated; and on that ground he thought, in the absence of better evidence, that Yelverton's was good enough.

“If we cannot come to the originals, let us take the confession of Sir H. Yelverton, who *particeps criminis*.”

The debate then turned upon the manner of repairing these omissions, and there followed a somewhat distracted and disorderly discussion, in the course of which the Speaker was again sharply criticised, but which ended in the appointment of a Committee to make arrangements for another conference the next day. Coke was to go early in the morning and ask for a second hearing. Crew and Finch were to be prepared to name the Referees, the fees to Justices, the advisers, the sharers, the proclamations, the imprisonment (in which Bacon was implicated), and all the rest; and Coke himself was to conclude and apply. The Lords replied that they would meet them at two in the afternoon. In the mean time the King came to the House and made “a long speech, the effect whereof was (as I hear)” says one of Carleton's correspondents, “to satisfy the Upper House that he was not guilty of those grievances which are now discovered, but that he grounded his judgment upon others who have misled him.” He was a little afraid that the conference might hinder the passing of the Subsidy Bill, which was not yet complete; and sent a message to the Lower House desiring that, unless both could be dispatched that afternoon, the conference might be deferred till Monday. But they answered that they would dispatch both: the conference was held at the hour agreed on and Crew and Finch performed their parts, — this time to Coke's satisfaction.

It was an unfortunate day for Bacon; who, though only named among the rest, was the real object of attack — as appears from the fact that when he was overthrown shortly after upon a totally different charge, the rest were not pursued any further. And it was the more unfortunate because his accusers were at liberty to speak against him whatever they pleased, while he, if he had had ever so good a defense to make, was not at liberty to say a word in answer. He could not so much as intimate that he was prepared to answer the charge at the proper time, without transgressing the rules of the House. Coke in reporting to the Commons what passed, observed “that both the Lord Treasurer and the Lord Chancellor did offer to make apologies for themselves, and to justify what they certified as Referees; but they deferred it to a more seasonable time:” and when he inquired whether they said that “as from the Lords in general” — the answer was a general cry of No: and this statement is fully confirmed by the account given in the Lords’ Journal of what was passing in the Upper House at the same time.

“The Lord Chancellor, removing from his place to his seat as a Peer, reported what passed at the last conference of both Houses on Saturday last; the inducement of which conference was, to clear the King’s honor touching grants to Sir Gyles Mompesson and the passages in procuring the same. The effect of which conference was that the King, upon the petition of Sir Gyles Mompesson to have a patent to reform abuses of divers innkeepers, and a warrant to compound for the penalty of obsolete laws touching the prices of horse-meat, referred the same unto divers Judges for the point of law, and to divers Lords for the point of conveniency.

“That his Majesty had the like care in granting the patent for the monopoly of the sole making of gold and

silver thread. And showed how Sir Henry Yelverton advised the same to be resumed into his Majesty's own hands, and by indentures to authorize divers to govern the same; which was first referred also by his Majesty to the consideration of divers of his Council; that the benefit arising to the King was set over to others, *pro tempore*; that the authority granted by the King was much abused in the execution thereof, to the intolerable grievance of the subject; and much imposture was used in the trade.

“The Lord Chamberlain declared that at the said conference with the House of Commons, two great Lords (meaning the Lord Chancellor and Lord Treasurer) spake in their own defense not being allowed so to do, when the Committees were named, and the said conference directed and limited by this House; which was against the ancient order thereof: and therefore his Lordship moved an order to be now entered to prevent the like hereafter, which was agreed unto; with this, that the said two Lords should give the House satisfaction by the acknowledgment of their error therein.

“Whereupon the Lord Chancellor, removing to his seat as a Peer, did acknowledge that, contrary to the orders of the House, he had spoken at the last conference more than he had direction by the House to do; and acknowledged that he had erred therein: the which acknowledgment the Lords generally accepted.

“The Lord Treasurer also made the like acknowledgment. And it was specially moved by the Lords that these acknowledgments should be entered by the clerk.”

The clerk who kept the Journal of the House of Lords entered with great punctuality all the orders and proceedings, but never anything of what passed in debate. It is impossible to know therefore how Bacon stood now in the general opinion of the House, or to guess what

chance he had of carrying them with him when the time came to answer these personal charges for delinquency as a Referee. But his position was now one of great danger. The Commons — ready to see any amount of iniquity in anything which Coke told them was inconsistent with some statute — determined to find no fault either in the King or Buckingham; and yet full of the patriotic fervor which cannot be satisfied without a victim, had evidently fixed on Bacon as the man who was really responsible for all that was wrong. He knew that when the Commons were in that humor, the Lords had never of late years had courage to oppose it, even when their proceedings were most unjustifiable:<sup>1</sup> and if he ever wished the King to exert his authority to protect him from an impeachment, I think it must have been at this time, and in this business of the Referees. His servant, Thomas Bushel, — a bad authority at best, for, besides several philosophical inventions which nobody else ever heard of, he has fathered upon Bacon a long speech, prepared, he says, for the House of Lords, with which it is impossible to believe that Bacon had anything to do, — Thomas Bushel, writing from recollection long after, represents his resolution to renounce his defense and submit himself to the Lords as a deliberate sacrifice to loyalty: the King, who feared that he could not save both him and Buckingham, having sent for him and given him “positive advice” to that effect; on which occasion he attributes to him certain words at parting which (if we make allowance for a little dilution, characteristic of the reporter) certainly have Bacon’s stamp upon them, both in thought and expression. “He took leave of him,” he says, “with these words: those that will strike at your Chancellor, it is much to be feared, will strike at your crown; and

<sup>1</sup> See the Bishop of Bristol’s case in 1607; Dr. Cowel’s in 1610; and the case of Lloyd or Floyd in the present summer, — which is yet to come, — much the worst of all.

wished that as he was then the first, so he might be the last of the sacrifices." We shall see presently, I think, that after Bacon was charged with corruption no such interview can have taken place; for we know on much better authority what passed at the only interview which did take place in the interval between the charge and the sentence. But it seems to me not unlikely that while the matter was not a charge of personal corruption, but "a beginning to question great counsellors and officers of the crown by courts or assemblies of estates"<sup>1</sup> for giving unconstitutional *advice* to the King, — and this was the case of the Referees, — Bacon did advise the King to interpose, and did warn him of the consequences of giving way. A councillor charged with corruption or offense against the law was to be handed over to the proper court for trial; but for offenses against the King in giving him unwise counsel or misinforming him as to the law, it was for the King himself to call him to account. To make the King's councillors answerable, not to the King, but to the House of Commons, would have been to anticipate the result of two revolutions and leap at one bound into our present constitution — in which it is true that the King's ministers are answerable to the House of Commons, but it is also true the House of Commons is the King. Such words, spoken on that occasion, would have been both appropriate and prophetic.<sup>2</sup>

<sup>1</sup> See letter to Buckingham, 7th March, p. 435.

<sup>2</sup> The anecdote told in a French letter (printed by Montagu, vol. xvi., part 2, note GGG) from "M. le Chevalier Digby" to "M. de Fermat" belongs also, I should think, to this time. Bacon came to Buckingham, told him of the charge which a member of the Lower House (*un de ceux de la chambre basse*) had made against him, and begged him to use his credit with the King on his behalf; and being told that he stood so well in the King's favor that he needed no intercession with him, replied that he thought he did stand very well, but that the best fire will always burn the brighter if it be properly blown.

There are no means of fixing the date with exactness. But such a conversation might certainly have taken place immediately after the conference of Saturday, March 10, before any charge of corruption had been made or thought of by anybody.

What kind of case would have been made out against Bacon in this matter of the Referees, if he had been formally accused and brought to his answer, it seems impossible to conjecture. I am myself inclined to think that he would have come off better than his accusers expected. But we shall never know ; for before the inquiry reached that stage a very different and much worse matter came out against him, which brought his public career to a sudden and disastrous close.

### CHAPTER III.

A. D. 1621. MARCH-MAY. ÆTAT. 60.

THE Committee of Grievances had not been long at their work when complaints were brought before them of abuses in the Courts of Justice; and especially the Court of Chancery: where the Registrars were accused of moving and drawing up orders themselves, and fathering them upon some counsellor-at-law. John Churchill appears to have been the principal offender in this way, and the principal accuser also. For having been himself detected in some such practices, and "sequestered from his office, with danger of further punishment," he resolved "not to sink alone," but to offer full confessions with regard to everybody else as well as himself. The date of his sequestration is not stated, but since upon the first mention of him which I find in the Journals (28 February), he is represented as having confessed these things to the Committee of Grievances, I suppose it had taken place before, and was Bacon's own act. The import of his confession was reported to the House on the 2d March, and the practice voted a great grievance. But we hear no more of it for some time; for Churchill's revelations pointed at nobler game. The discovery of such abuses in the administration of his own Court, though made by himself, showed that Bacon was at fault in the art of government, — the more because administrative reform was one of his favorite aspirations, — but it did not touch his private character otherwise. The disposition to "think men honest that but seem to be so," is a fruitful

source of abuses in all departments, and yet can hardly be reckoned a discredit to the owner. Large allowance would have been readily made to him on that score; and that there were any other blots on his own tables, strange as it may seem, it certainly does seem that for a full fortnight after that confession was made to the Committee he had no suspicion whatever. His feeling on the subject a fortnight before may be gathered from the following paragraph in Sir Edward Sackville's report from the Committee for Courts of Justice on the 17th of February: —

“Offered from the Lord Chancellor that any man might speak freely anything concerning his Court.”

The following letter, if the words have not been altered, must have been written while he was still Chancellor, in full action, and apparently in good spirits. And if it was written before the 14th of March, it cannot I think have been many days before; if after, not many days after.

[TO MR. MATTHEW.]

SIR, — I have received your letter, wherein you mention some passages at large, concerning the Lord you know of. You touched also that point in a letter which you wrote upon my Lord's going over; which I answered, and am a little doubtful whether mine ever came to your hands. It is true that I wrote a little sullenly therein; how I conceived that my Lord was a wise man in his own way, and perhaps thought it fit for him to be out with me; for at least I found no cause thereof in myself. As for the latter of these points, I am of the same judgment still; but for the former, I perceive by what you write that it is merely some misunderstanding of his. And I do a little marvel at the instance, which had relation to that other crabbed man. For I conceived that both in passing that book, and (as I remember) two



more, immediately after my Lord's going over, I had showed more readiness than many times I use in like cases. But to conclude, no man hath thought better of my Lord than I have done. I know his virtues, and namely that he hath much greatness of mind, which is a thing almost lost amongst men: nor can anybody be more sensible and remembering than I am of his former favors; so that I shall be most glad of his friendship. Neither are the past occasions in my opinion such as need either reparation or declaration; but may well go under the title of nothing. Now I had rather you dealt between us than anybody else, because you are no way drenched in any man's humor. Of other things at another time; but this I was forward to write in the midst of more business than ever I had.

If "my Lord" was Digby, as I suppose, the circumstances suit well with the date I have assigned to this letter. For Digby and Matthew were both at Brussels during the greater part of March. From the beginning of April to the middle of May, Digby was in England and Matthew still abroad. And the letter cannot, if correctly printed, have been written later than April, 1621; for unless "*I use*" is a mistake for "*I used*" it must have been written while Bacon still held the seals. Yet we find in it no hint of any personal apprehension; though he was standing on the very brink of such a downfall as has scarcely a parallel in history. Sudden and unexpected reverses of fortune, involving loss of place, power, means of life, and life itself, are common enough. But for a man who believed himself to be setting an example for others to follow, of zeal, integrity, and fidelity in the discharge of all his public duties, to find himself suddenly convicted on evidence which could not but seem conclusive, of corruption in the highest seat of justice, and condemned to serve for the example which all men were here-

after to shun,—and this without any warning from within of the danger in which he stood—was such a fall as neither guilty ambition nor injured innocence ever suffered. Guilt could not fall from such a height: innocence could not sink to such a depth.

I know nothing more inexplicable than Bacon's unconsciousness of the state of his own case, unless it be the case itself. That he, of all men, whose fault had always been too much carelessness about money—who though always too ready to borrow, to give, to lend, and to spend, had never been either a bargainer or a grasper or a hoarder—and whose professional experience must have continually reminded him of the peril of meddling with anything that could be construed into corruption,—that he should have allowed himself on any account to accept money from suitors while their cases were before him, is wonderful. That he should have done it without feeling at the time that he was laying himself open to a charge of what in law would be called bribery, is more wonderful still. That he should have done it often, and not lived under an abiding sense of insecurity,—from the consciousness that he had secrets to conceal, of which the disclosure would be fatal to his reputation, yet the safe keeping did not rest solely with himself,—is most wonderful of all. Give him credit for nothing more than ordinary intelligence and ordinary prudence—wisdom for a man's self—and it seems almost incredible. And yet I believe it was the fact. The whole course of his behavior, from the first rumor to the final sentence, convinces me that not the discovery of the thing only, but the thing itself, came upon him as a surprise; and that if anybody had told him the day before that he stood in danger of a charge of taking bribes, he would have received the suggestion with unaffected incredulity. How far I am justified in thinking so the reader shall judge for himself; for the impression is derived solely from the

tenor of the correspondence which will be laid before him in due order.

In the beginning of March, Bacon had been warned by one of his friends that he was likely to be charged by a discontented suitor with having, about two years and a half before, taken a sum of money from him for the better dispatch of a suit which was then in progress. And it was said that, though professing at the time to be ready to deny the imputation, he was so far disturbed by the threat that he took measures to get it retracted or forborne. But whatever measures he took, they were ineffectual; for on the 14th, Christopher Awbry presented a petition to the House, in which the story was told. It was referred at once to the Committee for Courts of Justice. And on the same day Bacon wrote the following letter to Buckingham, the date of which — a matter in this case of some importance — is ascertained by the docket; which Dr. Birch, who first printed it, appears to have overlooked; and which, though not the original docket (for the fly-leaf is gone), was probably copied from the original.

#### TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — Your Lordship spake of purgatory. I am now in it, but my mind is in a calm; for my fortune is not my felicity. I know I have clean hands and a clean heart; and I hope a clean house for friends or servants. But Job himself, or whosoever was the justest judge, by such hunting for matters against him as hath been used against me, may for a time seem foul, specially in a time when greatness is the mark and accusation is the game. And if this be to be a Chancellor, I think if the great seal lay upon Hounslow Heath, nobody would take it up. But the King and your Lordship will, I hope, put an end to these miseries one way or other. And in troth that which I fear most

is lest continual attendance and business, together with these cares, and want of time to do my weak body right this spring by diet and physic, will cast me down; and then it will be thought feigning or fainting. But I hope in God I shall hold out. God prosper you.

This was upon the first rumor of what was coming; before the Committee had reported upon the petition. But he had not heard all. For close upon the first revelation came a second which was like it. A man who had formerly been his client had a suit in Chancery of long standing about a disputed will. Bacon when he became Lord Keeper found it among the arrears of the Court, and made an order in it, the effect of which would have been to remove it to the Prerogative Court in the first instance, and thence for final decision to the King's Bench. It was arranged, however, upon a petition to the King from one of the parties, that the business should be referred to Bacon's arbitration, who undertook to make an end of it according to justice and conscience, having first bound both parties in 10,000 marks to stand to his award. But when his decision was pronounced, his old client (who thought that in the mean time he had made sure of a decree in his own favor) was greatly disappointed; and (being one of many who have no respect for arbitration when the decision goes against them) refused to obey. Whereupon a new bill was exhibited in Chancery, and Bacon ordered the bond of 10,000 marks to be assigned to the other party, "and he to put the same in suit in his Lordship's name." His decision, being again in accordance with the award which he had made as arbitrator, was again, of course, unwelcome to the recusant party; who, finding no justice in Chancery, was now fain to try the King's Bench, and found means to bring his claim in another form before that Court; but still with no better success, for judgment went against

him again. This was in 1620; and there the matter rested till the meeting of Parliament.

Whether this old client and aggrieved suitor was himself the mover in the next stage, I cannot clearly make out from the fragmentary notes and imperfect reports of the proceedings which have come down to us. It seems a strange disclosure for a man to make of his own accord — but whether it were that his sense of wrong was too lively to be silent, or that it was some consolation to bring the author of it to grief, or that he hoped by joining in the attack upon Bacon's judicial character to get a rehearing of his cause before another — he betrayed the fact that between the time when the first decree in the cause was pronounced (which was in May or June, 1617, and was intended and expected to have the effect of removing it out of the Court altogether) and the time when the parties agreed to refer it to him as arbitrator and bound themselves to abide by his award, — shortly after the one, and a few months before the other — he made him a present of a large sum of money. And though it appeared by the witnesses that it was offered only as a thankful acknowledgment of former services as counsel, and meant to buy a suit of hangings for York House, to which Bacon was then on the point of removing, he seems to have felt that it entitled him also to a favorable judgment from him as arbitrator — making the adverse decision a breach of faith as well as a denial of justice. For unless he meant it for a bribe, what had it to do with his grievance? His story (whoever brought it out and from whatever motive) came before the Committee for Courts of Justice, was inquired into, and found to be true. The justice of the judgment — which was not disputed either in this case or in Awbry's, except by those who had failed in the attempt to purchase a more favorable one for themselves — was not the question. It was enough to know that the money had been received from

suitors whose causes were still pending ; and armed with these two cases the Committee reported to the House that they had found matter for a charge of corruption against the Lord Chancellor. The 15th and 17th of March were occupied in hearing the particulars, and debating what should be done. The 18th was a Sunday. But on the 19th they sent word to the other House, that having "found abuses in certain eminent persons," they desired another conference ; which was immediately appointed for the same afternoon.

With a constitution so delicate and a mind so sensitive, it is not surprising that the shock produced by this new and unexpected situation proved too much for Bacon, and that his health gave way. On that day it was found necessary to appoint a substitute to supply his place in the House of Lords when he was too ill to attend ; and he wrote the following letter to them in explanation and excuse of his absence.

TO THE RIGHT HONORABLE HIS VERY GOOD LORDS, THE  
LORDS SPIRITUAL AND TEMPORAL IN THE UPPER  
HOUSE OF PARLIAMENT ASSEMBLED.

MY VERY GOOD LORDS, — I humbly pray your Lordships all to make a favorable and true construction of my absence. It is no feigning nor fainting, but sickness both of my heart and of my back, though joined with that comfort of mind, that persuadeth me that I am not far from heaven, whereof I feel the first fruits. And because, whether I live or die, I would be glad to preserve my honor and fame, as far as I am worthy ; hearing that some complaints of base bribery are come before your Lordships, my requests unto your Lordships are : first, that you will maintain me in your good opinion, without prejudice, until my cause be heard ; secondly, that, in regard I have sequestered my mind at this time in great part from worldly matters, thinking of my account and

answer in a higher court, your Lordships would give me some convenient time, according to the course of other courts, to advise with my counsel, and to make my answer ; wherein nevertheless my counsel's part will be the least ; for I shall not, by the grace of God, trick up an innocency with cavillations ; but plainly and ingenuously (as your Lordships know my manner is) declare what I know or remember ; thirdly, that, according to the course of justice, I may be allowed to except to the witnesses brought against me, and to move questions to your Lordships for their cross-examination, and likewise to produce my own witnesses for discovery of the truth ; and lastly, if there come any more petitions of like nature, that your Lordships would be pleased not to take any prejudice or apprehension of any number or muster of them, especially against a judge that makes two thousand decrees and orders in a year (not to speak of the courses that have been taken for hunting out complaints against me) ; but that I may answer them, according to the rules of justice, severally and respectively. These requests I hope appear to your Lordships no other than just. And so, thinking myself happy to have so noble Peers and reverend Prelates to discern of my cause, and desiring no privilege of greatness for subterfuge of guiltiness, but meaning (as I said) to deal fairly and plainly with your Lordships, and to put myself upon your honors and favors, I pray God to bless your counsels and your persons ; and rest

Your Lordships' humble servant,

FR. ST. ALBAN, Canc.

19th March, 1620.

This letter was delivered to the Lords the next day by Buckingham, immediately after they had heard the report of what passed at the conference with the Commons the day before. He had visited the Lord Chancellor twice (he told them in presenting it) by the King's

directions, had found him the first time "very sick and heavy ;" the second time better, and much comforted by hearing that the complaints against him had been referred to that House, where he assured himself to find honorable justice ; in confidence whereof he had written this letter to them. It was read twice, first by the Clerk and then again by the Lord Chief Justice—who was now Bacon's *locum tenens*. After which it was agreed, upon the motion of Lord Southampton, to send a verbal answer to this effect:—

"That the Lords received his Lordship's letter delivered unto them by the Lord Admiral: they intend to proceed in his cause (now before their Lordships) according to the right rule of Justice: and they shall be glad if his Lordship shall clear his honor therein: to which end they pray his Lordship to provide for his defense."

It would have been more to Bacon's purpose to know what facilities for defense would be allowed him. The charges were accumulating and the witnesses giving their evidence in his absence, and with no one to watch the proceedings on his behalf. If he did not know what he was charged with, or what the witnesses had deposed, how was he to provide for his defense? What he wanted to be assured of was that he would be allowed "to except to witnesses brought against him," to "move questions for their cross-examination," to "produce his own witnesses for discovery of the truth," and to have "convenient time to advise with his counsel and make his answer." In a judicial proceeding so new and rare, to be conducted by a body altogether unpractised in judicial investigation and for the most part very ill-qualified for it, it was far from certain that such things as these would be thought of, or admitted; and the terms of their answer did not give any assurance that they could be trusted to see the reason of them, and remember them in time.

They were the more important in this case because the



difference between a gratuity which a Chancellor might and one which he might not lawfully accept, was in those days a very nice one — not only in common opinion but in law. If the Lord Chancellor had been required to take the same oath which was required of the Justices (that is, the Judges of the King's Bench and Common Pleas, and the Barons of the Exchequer), it would have been comparatively simple and broad. For a *Justice* was required to swear that he would not “take by himself or by other, privily or apertly, gift nor reward of gold nor silver, nor of any other thing that might turn to his profit (unless it were meat or drink, and that of small value), of any man that should have any plea or process hanging before him, as long as the same process should be so hanging, *nor after for the same cause.*” So that, in the case of a Justice, the acceptance of any gratuity from any man who was or had been a suitor was a violation of his oath, as required by the statute. The statute had been suggested no doubt by the abuse of the practice in the ordinary courts of justice. To forbid the practice altogether was the best way to prevent the abuse of it; and it would have been wise and just to forbid it in the same way to everybody who had to exercise judicial functions of any kind. But had it been so forbidden? Though the practice would probably lead to the abuse, it did not necessarily imply it; and in order to prove it an act of corruption it would be necessary, I should suppose (in the absence of an express law making it so), to show that it was connected in some way with an unjust judgment: necessary in reason at least, however it may have been in law. A judge who decides a case unjustly, knowing his decision to be unjust, in favor of a suitor from whom he has received or has reason to expect a gratuity, is guilty of corruption by the unwritten law of nature, whether he has offended against the letter of any statute or not. But if he decides it (whether for or against such suitor) according to

the best of his belief justly, the law of nature sanctions no such inference. If his judgment is not affected by the gratuity, he is a just judge notwithstanding; and if the taking of gratuities has not been made by statute an offense in itself, without reference to the justice or injustice of the judgment following or preceding, he has not offended.<sup>1</sup>

<sup>1</sup> A learned friend to whom I submitted this passage, that he might tell me whether there was any objection to it in point of law, advised me to withdraw it; for though there might be no positive enactment prohibiting the Lord Chancellor from taking gifts, yet as all immoral acts are forbidden by the Common Law to everybody, and as the taking of gifts by a judge was an act recognized as immoral not only by the common conscience of mankind but by the particular statute of Ed. III., which imposed the oath, it was an offense against the Common Law by whomsoever committed; and as the offense consisted simply in taking the gift, the question whether the judgment had or had not been affected by it is irrelevant. "It is impossible (in law)," he says, "to go into that question." If this be all, the point of law resolves itself into a point of morals, upon which an unprofessional opinion may be as good as a professional. The act offends against the Common Law because it is immoral, and it is assumed to be immoral partly because everybody feels that it is, and partly because in the 20th year of Edward III. it was forbidden by law to the Judges. Now that every act which it has been found expedient to prohibit under penalties is in itself an immoral act, I cannot admit; for if I do I must admit that it is in itself immoral for a candidate at an election to give a dinner and a day's wages to a poor constituent who has sacrificed his day's work and made half-a-day's journey to vote for him; for that is an act which it has been found expedient to prohibit under penalty and declare to be corrupt. Is it true then that the act of taking a gift, *whether allowed to influence the judgment or not*, was always felt to be an act immoral in itself? If history could be cross-examined it would appear, I suspect, that until it was found by experience that corruption of judgment followed the practice, everybody thought it natural, and nobody thought it wrong. And speaking for myself, I say now that apart from its effect on the judgment — were it not that the offer or expectation of the gift tends to distort the judgment — there would be no immorality in the transaction at all; nor would there be more reason why a judge should not take a gift from a suitor than why a counsel should not take his fee from a client. Leave the matter to conscience and natural feeling, and the man who has received a benefit will desire to express gratitude in some form to the party at whose hands he has received it. That he has received no more than his due, and that his benefactor has done no more than his duty, will not seem a reason for refusing it: and it will be found that through all the social relations of mankind the expression of such gratitude, wherever it is not expressly forbidden, is thought right. Where it has been forbidden, as in the case of the Judges, — where the law has made it a crime for a man to do that which may tempt him to betray his duty, — he incurs the penalty by committing the act, and it is not necessary to inquire further. But where the act is alleged to be against law, not as having been expressly forbidden by law, but as being in its nature immoral, I must know whether he did betray his duty before I can say whether the act was against law or not.

Now, when I inquire by what statute, known to lawyers in the early part of the seventeenth century, the taking of gratuities by a Lord Chancellor had been declared to be an act of corruption in itself, I find, to my surprise, that the question is very difficult to answer. The oath taken by the Lord Chancellor contained no allusion to gifts or gratuities of any kind : and I have searched the index to the " Statutes of the Realm " in vain for traces of an act forbidding them to any other than the Justices. It is true that Coke in the 3d part of his " Institutes," c. 68, cites an Act of Parliament of 11 Hen. IV., in which it is enacted that no Chancellor, Treasurer, Keeper of the Privy Seal, King's Counsellor, King's Serjeant, or any other officer, judge, or minister of the King, receiving fees or wages of the King for their said offices or services, shall in future take any manner of gift or brocage of any *for doing their said offices and services* (preigne en null manner en temps a venir ascun manner de done ou brocage de nulluy pour leur ditz offices et services a fair) upon pain, etc., etc. But he says that it had never been printed before, and it is not now to be found in the " Statutes of the Realm : " and therefore I conclude that it cannot have been an act generally known. Not to add, that as it extends to all the services of all the officers who received any fee or wages for them from the King, it must have fallen long before James's time into utter oblivion and been broken openly every day. And, indeed, considering that the list includes so many officers who exercised no judicial functions between party and party, it is difficult to believe that judicial corruption was the thing aimed at or intended by it. Not to secure justice between party and party, but to secure undivided fidelity to the King, was (as I should suppose) the object of forbidding all these King's officers to take gift or brocage from anybody else. They all had to swear in one form or another that they would " well and truly serve the King," " not leaving or eschew-

ing so to do for affection, love, meed, doubt or dread of any person or persons:” “that neither for gift, wages, nor good deed, they would layne, disturb, nor let the profit or reasonable advantage of the King in the advantage of any other person, or themselves:” and so on,—the particular engagement varying according to the particular duty of the place. And that they might be in the less danger of temptation to prefer in the performance of their several services the advantage of any other to that of the King, they were all alike forbidden to receive anything for those services from any but the King. The prohibition was a wise one, if it could have been enforced. But it must have been very costly. If the King’s servants were to receive nothing for their work from anybody but himself, they must either have been badly paid or drawn heavily upon the Exchequer; and if this was the true meaning of the Act, its being soon laid aside and forgotten is sufficiently accounted for.

Now if it was doubtful in point of law whether the mere act of receiving a gratuity from a suitor in Chancery was itself, apart from all evidence that the decision of the suit had been influenced by it, an act of corruption,—and my chief reason for thinking that there was room for doubt is that the objection does not seem to have occurred to the Lords, and was not advanced or stood upon by Bacon himself,—it makes his position much more intelligible both in having allowed himself to fall into the practice and in being prepared (as he certainly was when he first heard of it) to repudiate the charge of corruption and stand upon his innocence. But if proof of corrupt *intention* was necessary to prove the act corrupt, opportunity to criticise the evidence became a matter of great importance. Whether he had ever wilfully or consciously perverted judgment for the sake of a gratuity, was known to no one so well as to himself. But whether he had ever accepted a gratuity under cir-

cumstances which would justify a presumption or suspicion that it had influenced his judgment, was a matter of evidence, and would depend upon points of great nicety and delicacy. He knew that he had never altered his judgment for a bribe, but he could not know that he had never made a wrong judgment: and a judgment found to be wrong, if it happened to follow a gratuity proved to have been received, would go far to convict him of the offense. He knew that he had never allowed a case which he had decided to be reheard or transferred to another tribunal, except where he had seen reason to doubt the justice of his own decision, or at least to desire that it might pass another judgment. But if it should appear that he had received a present in that case from the party whom the first decision did not favor, he could not escape suspicion of bribery. He knew that he never *meant* to take a gift with an understanding that it would procure a favorable decision; but he could not know that no gift had been given under that impression. The giver's report of the transaction would be unconsciously governed by his own understanding of it; and a slight difference in the story might turn it into evidence apparently conclusive. To remove suspicions of this kind it would be necessary to make it manifest to his judges that the course he had taken was right in itself, and that the gift had nothing to do with it; a thing which before such a tribunal would require a great deal of evidence and explanation.

All this he now saw plainly enough: and though he could not yet believe that the appearances against him would prove too strong to admit of satisfactory explanation,—still less that any practices in which he had really allowed himself were themselves too questionable to be justified,—he saw that the case would require careful watching, and that the defense would be difficult. He contented himself for the present, however, with re-

minding the Lords that there was matter in his letter to which they had not adverted ; and the messenger returned with the following answer : —

“ That the Lord Chancellor returns the Lords humble thanks for their Lordships’ assurance of justice in his cause, and well wishes to him of the success. The one secures, the other comforts him. That he intends to put their Lordships in mind hereafter of some points contained in his Lordship’s letter, for that the same were not spoken of in the message delivered unto him.” The Commons now handed the case over to the Lords, “ humbly desiring that inasmuch as it concerned a person of so great eminence, it might not depend long before their Lordships ; that the examination of the proofs might be expedited, and if he be found guilty, then to be punished ; if not, the accusers to be punished.”

As a means of “ expediting the examination of the proofs,” the King, when he heard how the case stood, offered to grant a Commission under the Great Seal to six members of the Upper and twelve of the Lower House (to be chosen by themselves), with power to examine witnesses upon oath. This should have been a fitter Court to try such a case than the whole House of Lords : but both Houses were jealous of their jurisdiction and delighted with their present good understanding ; the message was received coldly ; the King did not press it ; and the question was left to the ordinary course of Parliamentary proceeding — so far as it could be made out what the ordinary course was.

The Lords were glad to show how ready they were to undertake the case. They began to swear and examine the witnesses the same day, and the next day they appointed three committees of four, with “ power to take examinations of all points generally concerning this business ; with this special caution, that none be urged to accuse himself.” One of the Learned Counsel was ap-

pointed to attend each committee. And, "forasmuch as the examination of these witnesses would require much time, it was agreed" (March 21) "that the Committees should transmit the names of some of the principallest of them, and the heads whereupon they were to be examined; and the examinations to be taken in open Court." In open Court; but apparently without any opportunity for exception or cross-examination on behalf of the party accused. It was agreed at the same time, that all the witnesses so transmitted to be examined in open Court should have the following interrogatories ministered to them:—

"1. Whether they, by themselves or any other person, have given money or other gratuity to the Lord Chancellor, or to any other servants, friends, or follower of his?

"2. Whether they have advised or directed any so to do, or known of any other that hath so done?

"3. Whether they, or the parties which they advised so to do, or have heard so to have done, had then any cause or suit depending before him, or intended to have any?

"4. Whether they have intended, attempted, or contracted for any gratuity so to be given, though not performed?"

It was specially ordered also, that "no witnesses were to be examined what they received themselves, but only what bribes were given to the Lord Chancellor."

They had made up their minds already that a gratuity was a bribe; and as they had examined Churchill, the registrar, personally, just before, and certain "Instructions" with which he had furnished the House of Commons, "concerning divers bribes and abuses in the Chancery," were even now on their way to them—there could be little chance, with these means of discovery, these searching interrogatories, and these precautions for saying harmless all witnesses who would come forward,<sup>1</sup>

"After long debate of this matter, it was ordered, That the examinations taken in this Court should not be hereafter used in any other cause nor in any other court."—*Lords' Journals*, 23 March, 1620.

of any questionable act escaping detection. So that we probably know the worst of one side of the case, whatever obscurity may still rest upon it from the non-representation of the other.

On the 22d, three new cases were sent up from the Commons; many witnesses were examined: "the confession and instructions of John Churchill touching bribery and corruption of the Lord Chancellor was read," and delivered, along with the petitions in the three new cases, to the Committees for examination. Another Committee was appointed to search precedents for judicature. And as it was now within a week of Good Friday, it was agreed, upon an interchange of messages between the two Houses, that they should adjourn for Easter on the 27th of March, and meet again on the 17th of April: it being provided, however, that the Committees should go on with their examinations during the recess, and prepare them for the next session.

The 24th was the anniversary of the King's accession. On the 25th Bacon sent him, through Buckingham's hands, a letter, from which we learn something more as to his own view of his own position as he saw the storm gathering over him.

#### TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — Yesterday I know was no day; now I hope I shall hear from your Lordship, who are my anchor in these floods. Meanwhile to ease my heart a little, I have written to his Majesty the inclosed; which I pray your Lordship to read advisedly, and to deliver it, or not to deliver it, as you think best. God ever prosper your Lordship.

Yours ever what I can,

FR. ST. ALBAN, Canc.

March 25, 1621.



## LETTER TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — Time hath been when I have brought unto you *gemitum columbæ* from others. Now I bring it from myself. I fly unto your Majesty with the wings of a dove, which once within these seven days I thought would have carried me a higher flight.

When I enter into myself, I find not the materials of such a tempest as is comen upon me. I have been (as your Majesty knoweth best) never author of any immoderate counsel, but always desired to have things carried *suavibus modis*. I have been no avaricious oppressor of the people. I have been no haughty or intolerable or hateful man, in my conversation or carriage. I have inherited no hatred from my father, but am a good patriot born. Whence should this be? For these are the things that use to raise dislikes abroad.

For the House of Commons, I began my credit there, and now it must be the place of the sepulture thereof; and yet this Parliament, upon the message touching religion, the old love revived, and they said I was the same man still, only honesty was turned into honor.

For the Upper House, even within these days before these troubles, they seemed as to take me into their arms, finding in me ingenuity which they took to be the true straight line of nobleness, without crooks or angles.

And for the briberies and gifts wherewith I am charged, when the books of hearts shall be opened, I hope I shall not be found to have the troubled fountain of a corrupt heart in a depraved habit of taking rewards to pervert justice; howsoever I may be frail, and partake of the abuse of the times.

And therefore I am resolved when I come to my answer, not to trick up my innocency (as I writ to the Lords) by cavillations or voidances, but to speak to them

the language that my heart speaketh to me, in excusing, extenuating, or ingenuous confessing ; praying to God to give me the grace to see to the bottom of my faults, and that no hardness of heart do steal upon me, under show of more neatness of conscience than is cause.

But not to trouble your Majesty longer, craving pardon for this long mourning letter ; That which I thirst after as the hart after the streams, is that I may know by my matchless friend that presenteth to you this letter, your Majesty's heart (which is an *abyssus* of goodness, as I am an *abyssus* of misery) towards me. I have been ever your man, and counted myself but an usufructuary of myself, the property being yours : and now making myself an oblation to do with me as may best conduce to the honor of your justice, the honor of your mercy, and the use of your service, resting as

clay in your Majesty's gracious hands.

FR. ST. ALBAN, Canc.

March 25, 1621.

The next day the King made a speech to the House of Lords, recognizing their authority as the Supreme Court of Justice ; confirming their privileges, reminding them of their duties, advising them to be guided by precedents in the times of good government ; leaving judgment wholly to them, and declaring his readiness to carry their sentence into execution ; and moreover, in return for their kind dealing with himself, announcing his intention to "strike dead" the three Patents principally complained of — Inns, Ale-houses, Gold and Silver Thread — a temperate, judicious, honest speech ; with which the Lords were much gratified. The day after both the Houses adjourned ; the Lords' Committees being left to pursue the examinations, and Bacon to learn what he could of the evidence against him, and consider how his account stood, and what was best to do.

If he was well enough, he would naturally at such a time seek a little rest at Gorhambury. And if any faith is to be placed in an anecdote told by the author of "*Aulicus Coquinariæ*,"—an answer to Weldon's "*Life and Character of King James*,"—this seems to be the most likely occasion of it.

After commenting upon Weldon's account of Bacon, the writer goes on:—

"And let me give this light to his better character, from an observation of the late King, then Prince. Returning from hunting, he espied a coach attended with a goodly troop of horsemen, who it seems were gathered together to wait upon the Chancellor to his house at Gorhambury, at the time of his declension. At which the Prince smiled: 'Well, do we what we can,' said he, 'this man scorns to go out like a snuff.' Commending his undaunted spirit and excellent parts; not without some regret that such a man should be falling off."

The circumstances seem to suit this time better than any other. It was a short vacation after a busy term. A few days at his country-house in the beginning of April would do him good. He was still "the Chancellor:" and certainly it was "the time of his declension" and "falling off." He was accused, but not yet convicted. His retinue had not yet been dismissed. And at such a time his friends of the better sort would naturally gather about him for the very purpose of making the kind of demonstration which suggested the Prince's remark.

But though his servants and retainers still wore their liveries and rode their horses, and his friends mustered perhaps in greater force than usual, it was in no spirit of scorn or bravado that he was himself preparing to meet the fate which too surely awaited him. A better idea of the state of his mind will be formed from the two papers which follow, and which both belong to this interval.

On the 10th of April he made his will: a will drawn

up apparently in haste, with the brevity and simplicity of one who thought that he was taking leave of the world, and could not afford to waste words in long leave-taking.

THE LAST WILL AND TESTAMENT OF SIR FR. BACON,  
VISCT. OF ST. ALBAN'S, LORD CHANCELLOR OF ENGLAND.

I bequeath my soul to God above, by the oblation of my Saviour.

My body to be buried obscurely.

My name to the next ages, and to foreign nations.

My compositions unpublished, or the fragments of them, I require my servant Harris to deliver to my brother Constable, to the end that if any of these be fit in his judgment to be published, he may accordingly dispose of them. And in particular I wish the Elogium I wrote "*In felicem memoriam Reginae Elizabethæ*" may be published. And to my brother Constable I give all my books: and to my servant Harris for this his service and care fifty pieces in gold, pursed up.

To my wife, a box of rings; save the great diamond I would have restored to Sir George Reynell.

To the Prince, the golden screen which I provided for the Queen his mother.

To the Spanish Ambassador, the picture of Indian feathers, in the frame of gold.

To my L. Cavendish the casting bottle of gold.

To Sir Edw. Sackville, the ring with the crushed diamond, which the Prince gave me.

To Mr. John Finch, the lease of my lodgings at Gray's Inn.

All my lands, tenements, and hereditaments, leases, goods and chattels, and the use and trust of them where-soever and of what nature soever, I give and bequeath to my executors for the payment of my debts by their discretion, and the surplusage of the value of them to be disposed as followeth.

To my servant, Mr. Thomas Mewtys, £500.

To such other of my servants as I shall declare by writing or word before witnesses, £800.

The rest *in pios usus* to be distributed at the discretion of my executors.

I constitute my executors Mr. Thos. Crew, Mr. Thos. Hedley, Mr. John Finch, Mr. John Young my servant, and Mr. William Hatcher my servant; and I desire my executors to make the first offer of the reversion of Gorbambury and Verulam after my wife's decease, to the Prince's Highness; because they being things of pleasure and not far from Barkhamstead, it may be his Highness may take a like to deal for them.

My executors to have legacies in plate of £30 apiece. Justice Hutton to be the supervisor, to whom I give the triangle salt of gold.

FR. ST. ALBAN, Canc.

10 April, 1621.

Having thus disposed of his earthly affairs, he retired within himself, and still "thinking of his account and answer in a higher Court," made his silent appeal from earth to heaven—from those with whom explanation was hopeless to Him before whom concealment was impossible. That "prayer or psalm" which was found afterwards among his papers, and which Addison quoted as resembling the devotion of an angel rather than a man, was composed, certainly before the 18th of April, and most probably at this very time.

#### A PRAYER, OR PSALM.

Most gracious Lord God, my merciful Father, from my youth up, my Creator, my Redeemer, my Comforter. Thou (O Lord) soundest and searchest the depths and secrets of all hearts; thou knowedgest the upright of heart, thou judgest the hypocrite, thou ponderest men's

thoughts and doings as in a balance, thou measurest their intentions as with a line, vanity and crooked ways cannot be hid from thee.

Remember (O Lord) how thy servant hath walked before thee: remember what I have first sought, and what hath been principal in mine intentions. I have loved thy assemblies, I have mourned for the divisions of thy Church, I have delighted in the brightness of thy sanctuary. This vine which thy right hand hath planted in this nation, I have ever prayed unto thee that it might have the first and the latter rain; and that it might stretch her branches to the seas and to the floods. The state and bread of the poor and oppressed have been precious in mine eyes: I have hated all cruelty and hardness of heart: I have (though in a despised weed) procured the good of all men. If any have been mine enemies, I thought not of them; neither hath the sun almost set upon my displeasure; but I have been as a dove, free from superfluity of maliciousness. Thy creatures have been my books, but thy Scriptures much more. I have sought thee in the courts, fields, and gardens, but I have found thee in thy temples.

Thousand have been my sins, and ten thousand my transgressions; but thy sanctifications have remained with me, and my heart, through thy grace, hath been an unquenched coal upon thy altar. O Lord, my strength, I have since my youth met with thee in all my ways, by thy fatherly compassions, by thy comfortable chastisements, and by thy most visible providence. As thy favors have increased upon me, so have thy corrections; so as thou hast been alway near me, O Lord; and ever as my worldly blessings were exalted, so secret darts from thee have pierced me; and when I have ascended before men, I have descended in humiliation before thee.

And now when I thought most of peace and honor, thy hand is heavy upon me, and hath humbled me, ac-

according to thy former loving-kindness, keeping me still in thy fatherly school, not as a bastard, but as a child. Just are thy judgments upon me for my sins, which are more in number than the sands of the sea, but have no proportion to thy mercies ; for what are the sands of the sea to the sea, earth, heavens ? and all these are nothing to thy mercies.

Besides my innumerable sins, I confess before thee, that I am debtor to thee for the gracious talent of thy gifts and graces, which I have neither put into a napkin, nor put it (as I ought) to exchangers, where it might have made best profit ; but misspent it in things for which I was least fit ; so as I may truly say, my soul hath been a stranger in the course of my pilgrimage. Be merciful unto me (O Lord) for my Saviour's sake, and receive me into thy bosom, or guide me in thy ways.

This I take to be better evidence of the state of his mind at this crisis than the reports from Paul's walk, the speculations of courtiers, or the anecdotes of the next generation.

But the day passed over. He was not to die yet : and it was necessary to think of his account and answer in the inferior Court, by which he was to be judged on earth. Not yet knowing what he was to be charged with, he could not yet decide what course to take. But the examinations of the witnesses against him having for the last few days been taken "in open court," I presume that he knew the substance of their evidence, so far. What more the Committees that were at work during the recess would have to report to the House at its next meeting, he could not know : and till he did, he could only prepare himself and wait. But he knew enough to see that there was no hope of acquittal. Even if he had been charged with nothing for which he could not offer a justification really satisfactory to himself — even if he

had done nothing which at the time he did it he knew or believed to be censurable — how could he hope to satisfy his judges? In a case which was to be tried by a court of popular opinion — and the House of Lords in those days was no better — in a season of passionate political excitement, when the very ideas of public morality were in a state of revolution, and when, as commonly happens, those who are in most danger to be suspected of the crime join loudest in the hue and cry — to have had the evidence on the accusing part lying for weeks before the world — undisputed, unexamined, unexplained — for all men to talk of and form their impressions upon, was a disadvantage too heavy for any defense to overcome, even if the case had been in itself sound and clear. But Bacon's case was not so. He found when he came to examine it that he was to be accused of some things which he could neither deny nor honestly attempt to justify. The sentence therefore was certain to go against him; and the question was, what penalties the offense entailed, and what course was most likely to dispose the judges to be lenient.

He reviewed the records of cases bearing analogy to his own, especially with reference to the judgments passed.

Among these that of Sir William Thorpe, whose offense "was taking of money from five several persons that were felons, for staying their process of exigent; so that it made him a kind of accessory of felony, and touched upon matter capital," seems to be most in point. But he was Lord Chief Justice, and I have already pointed out the difference which the law had left between a Justice and a Chancellor in the matter of receiving gifts. It had bound the one, but not the other, by a carefully worded oath, to take none. That the distinction was a material one in the eyes of a lawyer, I infer from Coke's commentary upon Fortescue's definition of Bribery (which he takes for his text), the most material words of which he



represents as "warranted" — not by any act of parliament or judicial decision or received doctrine of common law — but "by the oath": and from his remark that Bribery, though only a misprision, is "a *great* misprision: for that it is ever accompanied with perjury." Even if the difference came by accident and oversight, a court of law was not competent to remove it, and was bound to take it into account while it remained. But in the record of Thorpe's case there was "a precise proviso that the judgment and proceeding should not be drawn into example against any, and especially not against any who had not taken the like oath." After which the difference could no longer be regarded as an oversight; being then deliberately recognized and allowed, and not removed by any amendment after. And if Bacon had thought it right to defend himself, it is easy to see how strong an argument in his own favor he might have extracted out of that precedent.

But before he decided what to do he desired to see and speak with the King: who, after some hesitation, and consultation with those of his Council who were members of the Upper House, consented to admit him to a private interview the day before the Houses met again. Of the substance of what passed at this interview, which has been much misunderstood, and is important, we are fortunate in having unusually good means of judging, — Bacon's own notes of what he intended to say; the Lord Treasurer's report to the Lords of what he did say, — which was of course the King's report; and a letter from Bacon to the King, written a few days after, reminding him of what he had said; which being all quite consistent with each other, it is not necessary to resort on this occasion to the reminiscences of Thomas Bushel, writing at fifty-eight of things which happened when he was eighteen and which then he could only have known by report. I have already disposed of them more conveniently by re-

ferring them to a similar occasion which had happened some weeks before,<sup>1</sup>—a mistake easily made at that distance. But at any rate there is no room for them here, for they do not fit with what we know on better authority.

Of Bacon's notes of what he meant to say, two versions were found among his papers,—one of which, though apparently meant for an enlarged and improved version of the other, remains unfinished. The other, which appears to have been written to dictation, is complete in itself, and runs thus : —

There be three degrees or cases of bribery charged or supposed in a Judge :

1. The first, of bargain or contract for reward to prevent justice, *pendente lite*.

2. The second, where the Judge conceives the cause to be at an end by the information of the party, or otherwise, and useth not such diligence as he ought to inquire of it.

3. And the third, when the cause is really ended, and it is *sine fraude* without relation to any precedent promise.

Now if I might see the particulars of my charge, I should deal plainly with your Majesty, in whether of these degrees every particular case falls.

But for the first of them, I take myself to be as innocent as any born upon St. Innocents day, in my heart.<sup>2</sup>

For the second, I doubt in some particulars I may be faulty.

And for the last, I conceived it to be no fault, but therein I desire to be better informed, that I may be twice penitent, once for the fact, and again for the error. For I had rather be a briber, than a defender of bribes.

I must likewise confess to your Majesty that at New-year's tides and likewise at my first coming in (which was as it were my wedding), I did not so precisely as

<sup>1</sup> Above, p. 442.

<sup>2</sup> The following sentence is crossed out : "And yet perhaps in some two or three of them the proofs may stand pregnant to the contrary."

perhaps I ought examine whether those that presented me had causes before me, yea or no.

And this is simply all that I can say for the present concerning my charge until I may receive it more particularly. And all this while, I do not fly to that, as to say, that these things are *vitia temporis* and not *vitia hominis*.

For my fortune, *summa summarum* with me is, that I may not be made altogether unprofitable to do your Majesty service or honor. If your Majesty continue me as I am, I hope I shall be a new man, and shall reform things out of feeling, more than another can do out of example. If I cast part of my burden, I shall be more strong and *delivré* to bear the rest. And, to tell your Majesty what my thoughts run upon, I think of writing a story of England, and of re-compiling of your laws into a better digest.

But to conclude, I most humbly pray your Majesty's direction and advice. For as your Majesty hath used to give me the attribute of care of your business, so I must now cast the care of myself upon God and you.

Of this interview and the result of it the Lords were duly informed the next day by the Lord Treasurer; from whose report we learn very distinctly the position taken both by Bacon and the King in the matter, at this stage of the proceeding.

The Lord Treasurer signified, that in the interim of this cessation, the Lord Chancellor was an humble suitor unto his Majesty, that he might see his Majesty and speak with him; and although his Majesty, in respect of the Lord Chancellor's person, and of the place he holds, might have given his Lordship that favor, yet, for that his Lordship is under the trial of this House, his Majesty would not on the sudden grant it.

That, on Sunday last, the King calling all the Lords of this House which were of his Council before him, it pleased his Majesty to show their Lordships what was desired by the Lord Chancellor, demanding their Lordships' advice therein.

The Lords did not presume to advise his Majesty; for that

his Majesty did suddenly propound such a course as all the world could not advise a better; which was, that his Majesty would speak with him privately.

That yesterday, his Majesty admitting the Lord Chancellor to his presence, his Lordship desired that he might have a particular of those matters wherewith he is charged before the Lords of this House; for that it, was not possible for him, who past so many orders and decrees in a year, to remember all things that fell out in them; and that, this being granted, his Lordship would desire two requests of his Majesty. 1. That, where his answers should be fair and clear to those things objected against him, his Lordship might stand upon his innocence. 2. Where his answer should not be so fair and clear, there his Lordship might be admitted to the extenuation of the charge; and where the proofs were full, and undeniable, his Lordship would ingenuously confess them, and put himself upon the mercy of the Lords.

Unto all which his Majesty's answer was, he referred him to the Lords of this House, and thereof his Majesty willed his Lordship to make report to their Lordships.

Bacon therefore not yet knowing the depth and extent of the charge, but knowing that there were some things in it which he could not clearly justify, wished the proceeding to be so arranged that he might defend himself where he believed that he was not guilty; explain himself where he believed that he was not so guilty as the charge implied; and where he could not either deny or extenuate the offense, plead guilty and submit. The King, on his part, simply declined to interfere, even by the expression of an opinion or a wish, with the action of the House of Lords.

The notice they took of the communication was merely a message of thanks to the King for his favor; the swearing of seventeen more witnesses *in causâ domini Cancellarii*, and an order to their Committees to "prepare the examinations against" him, and make their report the next morning; "to the end their Lordships may give

the Lord Chancellor such particulars of his charge as their Lordships shall judge fit." The next day (April 19th) the Committees made their several reports accordingly. The examinations (amounting to thirty or forty) were read; and because "these examinations were taken by three several Committees, and some were taken here in the House, and the examinations of the one spoke of some of the same things taken by the other, it was agreed that the three Committees should meet together (attended by the King's Counsel) to make one brief of all these examinations;" also that they were in the mean time to "continue to receive complaints and take examinations in the same cause." After which the House was adjourned to the 24th.

When he knew what had passed on the 19th, Bacon gave up all thought of standing upon his defense. The articles were too many, and the mind of the House too manifestly made up. The best he could hope was to avoid a formal sentence by a confession and submission. On the 20th, in a letter of thanks to the King for having admitted him to an interview, he still speaks of waiting to hear his charge before he answers particulars, and then of answering with the same distinctions which he had already indicated; in some things justifying, in others extenuating, in the rest confessing. But upon further consideration he seems to have conceived a hope that a general confession and submission, without waiting for the charge and therefore without entering into the particulars, might be accepted as sufficient; and that means might be found to persuade the Lords (the precedents of such cases being few and loose and without any settled rules of proceeding) to be content with his resignation of the seal, and so to let the matter end. In that hope he took advantage of the short adjournment to appeal to the King for help, and to draw up his letter of submission to the Lords; with what result we shall see.

The three following letters require no further explanation.

TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY,— I think myself infinitely bounden to your Majesty, for vouchsafing me access to your Royal Person, and to touch the hem of your garment. I see your Majesty imitateth him that would not break the broken reed, nor quench the smoking flax; and as your Majesty imitateth Christ, so I hope assuredly my Lords of the Upper House will imitate you; and unto your Majesty's grace and mercy, and next to my Lords, I recommend myself. It is not possible, nor it were not safe, for me to answer particulars till I have my charge; which when I shall receive, I shall without fig-leaves or disguise excuse what I can excuse, extenuate what I can extenuate, and ingenuously confess what I can neither clear nor extenuate. And if there be anything which I mought conceive to be no offense, and yet is, I desire to be informed, that I may be twice penitent, once for my fault, and the second time for my error. And so submitting all that I am to your Majesty's grace, I rest——

20 April, 1621.

TO THE KING'S MOST EXCELLENT MAJESTY.

IT MAY PLEASE YOUR MAJESTY,— It hath pleased God for these three days past, to visit me with such extremity of headache, upon the hinder part of my head, fixed in one place, that I thought verily it had been some imposthumation. And then the little physick that I have told me, that either it must grow to a congelation, and so to a lethargy, or to break, and so to a mortal fever or sudden death. Which apprehension (and chiefly the anguish of the pain) made me unable to think of any business. But now that the pain itself is assuaged to be tolerable, I resume the care of my business, and therein

prostrate myself again, by my letter, at your Majesty's feet.

Your Majesty can bear me witness, that at my last so comfortable access I did not so much as move your Majesty, by your absolute power of pardon or otherwise, to take my cause into your hands and to interpose between the sentence of the House; and according to mine own desire your Majesty left it to the sentence of the House, and so was reported by my Lord Treasurer.

But now if not *per omnipotentiam* (as the divines speak) but *per potestatem suaviter disponentem*, your Majesty will graciously save me from a sentence with the good liking of the House, and that cup may pass from me; it is the utmost of my desires.

This I move with the more belief, because I assure myself that if it be reformation that is sought, the very taking away the seal, upon my general submission, will be as much in example for these four hundred years, as any further severity.

The means of this I most humbly leave unto your Majesty. But surely I conceive, that your Majesty opening yourself in this kind to the Lords Counsellors, and a motion from the Prince after my submission, and my Lord Marquis using his interest with his friends in the House, may effect the sparing of a sentence; I making my humble suit to the House for that purpose, joined with the delivery of the seal into your Majesty's hands.

This is the last suit I shall make to your Majesty in this business, prostrating myself at your mercy-seat, after fifteen years' service, wherein I have served your Majesty in my poor endeavors with an entire heart, and as I presumed to say unto your Majesty, am still a virgin for matters that concern your person or crown; and now only craving that after eight steps of honor I be not precipitated altogether.

But because he that hath taken bribes is apt to give

bribes, I will go further, and present your Majesty with a bribe. For if your Majesty give me peace and leisure, and God give me life, I will present your Majesty with a good history of England, and a better digest of your laws. And so concluding with my prayers, I rest

Your Majesty's afflicted,

but ever devoted servant,

FR. ST. ALBAN, Canc.

21 April, 1621.

TO THE RIGHT HONORABLE THE LORDS OF THE PARLIAMENT,  
IN THE UPPER HOUSE ASSEMBLED.

*The humble Submission and Supplication of the Lord Chancellor.*

IT MAY PLEASE YOUR LORDSHIPS, — I shall humbly crave at your Lordships' hands a benign interpretation of that which I shall now write. For words that come from wasted spirits and an oppressed mind are more safe in being deposited in a noble construction, than in being circled with any reserved caution.

This being moved, and as I hope obtained, in the nature of a protection to all that I shall say, I shall now make into the rest of that wherewith I shall at this time trouble your Lordships, a very strange entrance. For in the midst of a state of as great affliction as I think a mortal man can endure (honor being above life), I shall begin with the professing of gladness in some things.

The first is, that hereafter the greatness of a judge or magistrate shall be no sanctuary or protection of guiltiness; which, in few words, is the beginning of a golden world.

The next, that after this example, it is like that judges will fly from anything that is in the likeness of corruption (though it were at a great distance), as from a serpent; which tendeth to the purging of the courts of justice, and the reducing them to their true honor and splendor.

And in these two points God is my witness that, though



it be my fortune to be the anvil whereupon these good effects are beaten and wrought, I take no small comfort.

But to pass from the motions of my heart, whereof God is only judge, to the merits of my cause, whereof your Lordships are judges, under God and his lieutenant; I do understand there hath been heretofore expected from me some justification; and therefore I have chosen one only justification instead of all other, out of the justifications of Job. For after the clear submission and confession which I shall now make unto your Lordships, I hope I may say and justify with Job in these words: *I have not hid my sin as did Adam, nor concealed my faults in my bosom.* This is the only justification which I will use.

It resteth therefore, that, without fig-leaves, I do ingenuously confess and acknowledge, that having understood the particulars of the charge, not formally from the House, but enough to inform my conscience and memory, I find matter sufficient and full, both to move me to desert the defense, and to move your Lordships to condemn and censure me.

Neither will I trouble your Lordships by singling those particulars, which I think may fall off.

*Quid te exempta juvat spinis de pluribus una?*

Neither will I prompt your Lordships to observe upon the proofs, where they come not home, or the scruples touching the credits of the witnesses. Neither will I represent unto your Lordships, how far a defense might in divers things extenuate the offense, in respect of the time or manner of the gift, or the like circumstances, but only leave these things to spring out of your own noble thoughts, and observations of the evidence and examinations themselves; and charitably to wind about the particulars of the charge here and there, as God shall put into your mind; and so submit myself wholly to your piety and grace.

And now that I have spoken to your Lordships as Judges, I shall say a few words to you as Peers and Prelates, humbly commending my cause to your noble minds and magnanimous affections.

Your Lordships are not simple Judges, but Parliamentary Judges; you have a further extent of arbitrary power than other courts; and if your Lordships be not tied by the ordinary course of courts or precedents in points of strictness and severity, much more in points of mercy and mitigation.

And yet if anything I shall move might be contrary to your honorable and worthy ends to introduce a reformation, I should not seek it. But herein I beseech your Lordships to give me leave to tell you a story. Titus Manlius took his son's life for giving battle against the prohibition of his general: not many years after, the like severity was pursued by Papirius Cursor, the Dictator, against Quintus Maximus, who being upon the point to be sentenced, by the intercession of some principal persons of the senate was spared; whereupon Livy maketh this grave and gracious observation. *Neque minus firmata est disciplina militaris periculo Quinti Maximi, quam miserabili supplicio Titi Manlii.* The discipline of war was no less established by the questioning of Quintus Maximus, than by the punishment of Titus Manlius. And the same reason is of the reformation of justice; for the questioning of men of eminent place hath the same terror, though not the same rigor, with the punishment.

But my case standeth not there. For my humble desire is, that his Majesty would take the seal into his hands, which is a great downfall, and may serve I hope in itself for an expiation of my faults.

Therefore, if mercy and mitigation be in your power, and do no ways cross your ends, why should I not hope of your Lordships favor and commiseration?

Your Lordships will be pleased to behold your chief

pattern, the King our Sovereign, a King of incomparable clemency, and whose heart is inscrutable for wisdom and goodness. Your Lordships will remember, that there sat not these hundred years before a Prince in your house, and never such a Prince, whose presence deserveth to be made memorable by records and acts mixed of mercy and justice. Yourselves are either nobles (and compassion ever beateth in the veins of noble blood) or reverend prelates, who are the servants of Him that would not break the bruised reed nor quench the smoking flax. You all sit upon one high stage, and therefore cannot but be more sensible of the changes of the world, and of the fall of any of high place.

Neither will your Lordships forget that there are *vitia temporis* as well as *vitia hominis*, and that the beginning of reformation hath the contrary power of the pool of Bethesda, for that had strength to cure only him that was first cast in, and this hath commonly strength to hurt him only that is first cast in. And for my part, I wish it may stay there, and go no further.

Lastly, I assure myself your Lordships have a noble feeling of me, as a member of your own body, and one that in this very session had some taste of your loving affections; which I hope was not a lightning before the death of them, but rather a spark of that grace which now in the conclusion will more appear.

And, therefore, my humble suit to your Lordships is, that my penitent submission may be my sentence, and the loss of the seal my punishment; and that your Lordships will spare any further sentence, but recommend me to his Majesty's grace and pardon for all that is past. God's Holy Spirit be amongst you.

Your Lordships' humble

servant and suppliant,

FR. ST. ALBAN, Canc.

April 22, 1621.

If it had been possible to settle the matter in this way, a fairer and juster impression of the merits of the case would have been left in the popular mind than could have been made by any other course, short of a full trial in open court, with distinct discussion of every charge: which discussion could not have been complete without opportunity given to the defendant "to except to the witnesses brought against him; to move questions for their cross-examination; and to produce his own witnesses for discovery of the truth."<sup>1</sup> I do not doubt that the several Committees had done their best to cross-examine and test the witnesses; but what could their best be worth without the help of suggestions from the party accused? One Committee consisted of the Earl of Arundel, the Bishop of Durham, Lord Sheffield, and Lord Hunsdon. Another of the Earl of Huntingdon, the Bishop of Winchester, Lord Wentworth, and Lord Houghton; the third of the Earl of Southampton, the Bishop of Coventry and Lichfield, Lord Spencer, and Lord Saye and Seal. All worthy men, for anything I know to the contrary, and fairly chosen as having no personal interest in the parties or the cause. I dare say they would have made very good juries — possibly very good judges — *in a case properly set forth before them.* But the proper setting forth of a case implies the hearing of both sides; and they had no opportunity of hearing more than one. For even if they had sagacity enough to cross-examine the several deponents judiciously, they could not have the information necessary to guide the cross-examination. The depositions may have contained statements which, though not improbable in themselves, were incompatible with other provable facts, known to the party accused, but not possible to be known to them without his prompting. The unsatisfactory part of the arrangement was that these Committees of four, when

<sup>1</sup> See Bacon's first letter to the Lords, March 19, p. 452.

they had heard the case for the prosecution (which was in fact all they did), became of necessity (without hearing any more) judges of the whole case. For though the decision rested formally in the vote of the whole House, what could the whole House do with the forty or fifty depositions which they heard read out by the Clerk, but accept them on the authority of those Committees without further question? It would be hardly fair perhaps to compare it with a modern trial in which the jury should give their verdict after hearing only the examination in chief of the witnesses for the prosecution; for in that case the witnesses would be partially selected, and the questions carefully contrived to support the case. But every man's experience of the difference in the aspect of a witness's evidence before cross-examination and after, will enable him to understand how unsatisfactory such a process was for the discovery of the truth in such a question. To make their reports of any value, every one of these Committees of four ought to have contained at least one member in communication with Bacon, and watching the evidence on his behalf. One instance we happen to know of, though only by accident, where the evidence of a witness in a case closely connected with Bacon's and resembling it in all material points, was found by the Committee itself to be so modified when he came to be examined on his oath, that upon their report the House forbore to pass sentence. Randolph Davenport, one of Bacon's servants, — whose evidence against the Bishop of Landaff, as reported from the Commons, *seems* as precise, as circumstantial, and as conclusive as any of the evidence against Bacon himself,<sup>1</sup> — be-

<sup>1</sup> The effect of what the Conference Committee of the Commons represented him as having delivered to them was that he had himself been employed at the Bishop's instance in an attempt to procure in the manner and for the considerations following, a new hearing of a case which had been decided. The party against whom the decision had gone was to engage, in case they got it reversed, to pay £6,000, to be "shared amongst them and certain honorable persons."

ing examined on oath by the Lords, "did not affirm the same which he had delivered unto the Commons (*as is supposed*)."

"The proofs" of the matter "complained of by the Commons to the House" were found to be "small; nothing but an intent (at the most) being proved." So they agreed, instead of passing sentence, to refer the case to the Archbishop of Canterbury; by whom the impugned Bishop was to be admonished before the Bishops and Clergy in the Convocation House; the following message being at the same time sent to the House of Commons by way of excuse:—

"Whereas the House of Commons informed this House of a great misdemeanor committed by Dr. Feild (now Bishop of Landaph), and since also hath sent to demand judgment in that cause; the Lords, having taken full examination thereof upon oath, *find not the same proved upon oath as it seems was informed them upon examination in their House*; and for the further satisfaction of the Commons therein, the Lords have sent them the examination of Randolfe Davenport."

To which answer was presently brought by the messengers:—

"The Commons return great thanks for the Lords' honorable and just proceeding in the cause of the Lord Bishop of Landaph, and for sending the examination of Davenport; by

Of this the Bishop's share "was to have been so great as no Court of Justice would allow" [for what service is not stated; but I am quoting from the Lords' Journals the Lord Treasurer's report of the Conference between the two Houses the day before]. In confirmation of which, letters of the Bishop's were produced, "naming the sum, and setting down a course how this £6,000 might be raised," namely, out of the land which was to be decreed to the party upon the proposed new hearing of the case: he binding himself to the Bishop in a recognizance of £10,000 to pay the money: and receiving the Bishop's promise in return "to deliver up the recognizance to be cancelled," if the reversal of the decree were not obtained. The conditions being thus arranged, Randolph Davenport (the deponent) rode off to the Court, moved Buckingham "for his letter to the Lord Chancellor herein;" and being refused, " essayed to get the King's letter, but failed therein also: so that the good they intended to Mr. Egerton was not effected: and yet the Bishop, though required, refused to deliver up the said recognizance, until Mr. Egerton threatened to complain thereof to the King."

which it doth appear that *his examination taken by them doth differ much from that taken upon his oath before their Lordships.*"

The result was that the Bishop was not only let off with an admonition, but allowed to take his place as usual in the House without waiting till he had received it.

Such things, therefore, might happen. Information sent up from the House of Commons might be erroneous in material points, and why not in the evidence against Bacon as well as against Dr. Feild? It may be said indeed that in that case the Lords would have found it out, as we see they did in this. But that does not follow. They had facilities in the one case which were wanting in the other. The Bishop was in the House when the report of the accusation by the Commons was brought up, and replied to it at once. This would of itself enlighten the Committee as to the questions to be asked. He was in continual attendance in the House, and had means of communication with members of the Committee from time to time. He was a Bishop, and there was no one in that house who thought it virtuous to disgrace a Bishop. In all which respects Bacon's case was quite different.

But though I do not doubt that if Bacon's cause had been properly discussed, it would have presented a very different aspect, yet considering all the conditions, — among which the condition of his own health and spirits was not the least important, — I dare say he took the wisest course. If the Lords could have been as gently disposed towards him as they were towards the Bishop, they might have found it in their consciences to dismiss him, with the loss of the Seal, to be admonished by the King. And though there was not much hope of that, there was perhaps as little hope of any alteration in their judgment to be made now even by the most skilful de-

fense; the case being one which did not admit of defense clear and absolute, and which they had been all thinking and talking about for the last month under a full impression that it admitted of no defense at all: an impression which only a high degree of trained and practiced judicial impartiality can dismiss or suspend in order to reconsider. It was the first case, also, of its kind, and had come before them when the appetite was fresh and keen. The Bishop's censure came on a month later; when both Houses were tolerably well satisfied with slaughter, when the Lords had established their credit with the Commons as a Court of Judicature by a readiness to condemn, with or without reason, whomsoever they accused; and when other matters were beginning to occupy their attention.

On the 24th of April, as soon as the Lords were ready to hear the report of the Committees prepared according to the last instructions, the Prince rose and said that the L. Chancellor had sent him his submission, and therewith delivered his letter, which was immediately read, first by the clerk and then by the Lord Chief Justice. After which there was a pause. "No Lord spoke to it after it was read for a long time." "The question is," said the Lord Chamberlain at last (who seems to have acted as leader of the government party), "whether this submission be sufficient to ground your Lordships' judgment for a censure, without further examination;" and thereupon the House resolved itself into a Committee of the whole to consider it. The first thing was to have the charge — that is, "the collection of the corruptions wherewith the Lord Chancellor was charged," now amounting to twenty-three — read out, and then the confession. Elsing's notes of the debate which followed give us some light as to the views of the different parties. The Prince and Buckingham were evidently for accepting the submission and sparing a formal sentence; but that motion found so little encouragement that it does not appear to



have been formally put. Others on the other hand were for ignoring it altogether. "If this submission intend a connivance," said Lord Saye, "it had been well in the beginning, but coming now after the examinations and proofs, it comes too late. Neither is it sufficient to ground our sentence. Moved to proceed." "The confession is not sufficient," said the Earl of Suffolk (who was not sorry, perhaps, to repay Bacon in kind for his proceedings in the Star Chamber in 1619), "for he desires to be a judge, — to lose his seal, and that to be the sentence: wherefore it is far short of that we expect." But the true objection and the fair and just course was indicated by the Lord Chamberlain and the Earl of Southampton. It was a confession that he had done enough to deserve condemnation and censure, but not that he had done what he was charged with. "It is not sufficient," said the Lord Chamberlain, "for the confession is grounded upon a rumor. . . . He neither speaks of the particular charge, nor confesseth anything particular." "He is charged by the Commons," said Southampton, "with corruption; and no word of confession of any corruption in his submission. It stands with the justice and honor of this House not to proceed without the parties' particular confession; or to have the parties to hear the charge, and we to hear the parties' answer."

All agreeing that the confession was not full enough, but must refer to the particular charges, the question arose, whether Bacon should be required to attend and hear and answer in person, or should have them sent to him and return his answer in writing. Upon this there was a difference of opinion, and a debate followed which throws some further light upon the personal history of the case. Buckingham, Arundel, the Lord Chamberlain, Southampton, Lenox, the Prince, the Bishop of Durham; all spoke in favor of sending the particulars of the charge to him and expecting his answer by letter: both Buck-

ingham and the Lord Chamberlain advocating it earnestly and eagerly. On the other hand, Huntingdon, Suffolk, Saye, and Wallingford, were all for bringing him to the Bar,—Suffolk especially urging it vehemently and repeatedly. On a division, it was carried in favor of what may be called, I suppose, the Court party (for all the Councillors who spoke were in the majority); and agreed that the charge should be sent to him.

When the “collection of corruptions” was read to the House that they might compare it with the confession, it had been read together with “the proofs thereof;” meaning the names of the witnesses whose depositions constituted the evidence in each case. It was now sent to Bacon; but “without the proofs,” and with the following message:—

“That the Lord Chancellor’s confession is not fully set down by his Lordship in the said submission for three causes. 1. His Lordship confesseth not any particular bribe nor corruption. 2. Nor sheweth how his Lordship heard of the charge thereof. 3. The confession, such as it is, is afterwards extenuated in the same submission: and therefore the Lords have sent him a particular of the charge, and do expect his answer to the same, with all convenient expedition.”

His reply by the messengers was that “he would return the Lords an answer;” which being their own word should have been least liable to be misunderstood. But a letter which he wrote at the same time to their Speaker raised a suspicion that his “answer” was to be a defense. The contents of this letter we do not know; for being addressed to the Chief Justice and not to the House, no official notice was taken of it. It seems, however, that it contained something about “postilling the matters of charge in the margent,” and something about time to be allowed. I should suppose therefore that its real object was, first to explain the form of the answer which he meant to return, and secondly, to learn what

time would be allowed for drawing it up. Upon this followed a lively debate. Their difficulty, apparently, was to understand how a confession could require time. The charges were definite. He was either guilty or not guilty. If guilty, let him say so at once, and they were prepared to pronounce judgment. If not, let him come to the Bar and defend himself. That a charge might be true in part and yet require limitations and explanations to make it true altogether, was a point in judicial science beyond their present learning, and remained unintelligible to them all through, — as we shall see. But though the doubt might have been spared, the course they took to settle it was rational. Upon the Prince's motion, seconded by Southampton, it was resolved to ask him the question: did he mean to confess or to defend himself? A message was sent accordingly, requiring an answer "directly and presently." And answer was immediately returned — this time, we are told, "in writing."

"The Lord Chancellor will make no manner of defense to the charge, but meaneth to acknowledge corruption, and to make a particular confession to every point, and after that an humble submission.

"But humbly craves liberty, that where the charge is more full than he finds the truth of the fact, he may make declaration of the truth in such particulars; the charge being brief, and containing not all circumstances."

With this at last they seem to have been satisfied, and though Suffolk still insisted that the submission should be made in person, they agreed to give him to the 30th of April (five days) to send in "such confession and submission as he intended to make."

That the collection of charges sent to him was not accompanied with what they called "the proofs" — that is, with a note of the names of the witnesses by whose depositions each was said to be proved — was not ma-

terial. If he had meant to defend himself, he would have wanted to know not only who they were, but what they had deposed. But intending to make a clear confession of the truth as far as he "knew or remembered," it was enough to be informed of the facts which were laid to his charge. What more was contained in those depositions I suppose he never knew, unless by report of those who had been present at the examinations "in open court": and we are still more in the dark than he was; for we know nothing at all about any of them, except the few which were taken at first by the Commons, and sent up by them to the Lords with reports of what they proved, — not always (as we have seen in the case of Dr. Feild) to be borne out by a more stringent examination. As this list contains all the offenses of which he was accused, and therefore all to which his confession applies, we must be careful not to suppose that he thereby admitted himself to be guilty of anything beyond what is set down in the record and acknowledged by himself to be true. The absence of all attempt on the part of the Lords either to sift and weigh evidence, or to distinguish cases according to the degree of guilt implied, or to explain how far in each case he was proved to have transgressed the law, or what the law was, and where lay the line which separated what was permitted from what was forbidden, — their course of bundling into one bag charges and depositions of all natures, and calling upon him to confess or answer to the bundle, — makes his own articulate confession upon each separate charge, with its corrections, distinctions, and qualifications, the best evidence we have as to the nature and degree of his offenses. He had already said that he meant to confess himself guilty of corruption. But corruption includes acts of various complexions — varying from violations of universal morality of the blackest dye to violations only of artificial and conventional regulations, made to defend the

outworks of morality — acts illegal rather than immoral : and as the Judges neither made any attempt themselves to draw such distinctions, nor placed on record any of the evidence which would enable us to do so, we are compelled to fall back upon Bacon himself, as being really our only authority ; and to hold him guilty to the extent of his own confession, and no further. From the manner in which the case was tried it is impossible to regard anything else as proved.

On the 30th of April, the Lord Chief Justice received from him a paper roll, sealed up ; which being delivered to the Clerk and opened, was found to be directed to the Lords, and ordered to be read. It was in the following words. The text is taken from the copy printed in the Journal for April 30.

TO THE RIGHT HONORABLE THE LORDS SPIRITUAL AND TEMPORAL IN THE HIGH COURT OF PARLIAMENT ASSEMBLED.

*The Confession and humble Submission of me, the Lord Chancellor.*

Upon advised consideration of the charge, descending into my own conscience, and calling my memory to account so far as I am able, I do plainly and ingenuously confess that I am guilty of corruption ; and do renounce all defense, and put myself upon the grace and mercy of your Lordships.

The particulars I confess and declare to be as followeth :—

1. To the first article of the charge, *videlicet*, In the cause between Sir Rowland Egerton and Edward Egerton, the Lord Chancellor received five hundred pounds on the part of Sir Rowland Egerton, before he decreed the cause :—

I do confess and declare, that upon a reference from his Majesty of all suits and controversies between Sir Rowland Egerton and Edward Egerton, both parties submitted themselves to my award by recognizance recipro-

cal in ten thousand marks apiece; thereupon, after divers hearings, I made my award, with advice and consent of my Lord Hobart. The award was perfected and published to the parties, which was in February; then some days after, the five hundred pounds mentioned in the charge was delivered unto me.

Afterwards Mr. Edward Egerton fled off from the award; then, in Midsummer term following, a suit was begun in Chancery by Sir Rowland to have the award confirmed; and upon that suit was the decree made which is mentioned in the article.

2. To the second article of the charge, *videlicet*, In the same cause he received from Edward Egerton four hundred pounds: —

I confess and declare, that soon after my first coming to the Seal (being a time when I was presented by many) the four hundred pounds mentioned in the said charge was delivered unto me in a purse, and I now call to mind, from Mr. Edward Egerton; but, as far as I can remember, it was expressed by them that brought it to be for favors past, and not in respect of favors to come.

3. To the third article of the charge, *videlicet*, In the cause between Hodie and Hodye, he received a dozen of buttons of the value of fifty pounds about a fortnight after the cause was ended: —

I confess and declare, that as it is laid in the charge, about a fortnight after the cause was ended (it being a suit of a great inheritance) there were gold buttons about the value of fifty pounds as is mentioned in the charge, presented unto me, as I remember, by Sir Thomas Perient and the party himself.

4. To the fourth article, *videlicet*, In the cause between the Lady Wharton and the coheirs of Sir Francis Wyloughby, he received of the Lady Wharton three hundred and ten pounds: —

I confess and declare, that I received of the Lady

Wharton, at two several times (as I remember), in gold, two hundred pounds and an hundred pieces; and this was certainly *pendente lite*: but yet I have a vehement suspicion that there was some shuffling between Mr. Shute and the Register in entering some orders, which afterwards I did distaste.

5. To the fifth article of the charge, *videlicet*, In Sir Thomas Monk's cause, he received from Sir Thomas Monk, by the hands of Sir Henry Helmes, an hundred and ten pounds; but this was three quarters of a year after the suit was ended:—

I confess it to be true, that I received an hundred pieces; but it was long after the suit ended, as is contained in the charge.

6. To the sixth article of the charge, *videlicet*, In the cause between Sir John Treavor and Ascue, he received on the part of Sir John Treavor an hundred pounds:—

I confess and declare, that I received at New-year's tide an hundred pounds from Sir John Treavor; and, because it came as a New-year's gift, I neglected to inquire whether the cause was ended or depending; but since I find, that though the cause was then dismissed to a trial at law, yet the equity is reserved, so as it was in that kind *pendente lite*.

7. To the seventh article of the charge, *videlicet*, In the cause between Holman and Yong, he received of Yong an hundred pounds after the decree made for him:—

I confess and declare, That, as I remember, a good while after the cause ended, I received an hundred pounds either by Mr. Tobye Matthew, or from Yong himself: but whereas I understood that there was some money given by Holman to my servant Hatcher, with that certainly I was never made privy.<sup>1</sup>

<sup>1</sup> This was claimed by Holman from Bacon's executors as a debt due from the estate. See note 1, p. 505.

8. To the eighth article of the charge, *videlicet*, In the cause between Fisher and Wrenham, the Lord Chancellor, after the decree passed, received from Fisher a suit of hangings worth an hundred and sixty pounds and better, which Fisher gave by advice of Mr. Shute: —

I confess and declare, That some time after the decree passed, I being at that time upon remove to York House, I did receive a suit of hangings of the value (I think) mentioned in the charge, by Mr. Shute, as from Sir Edward Fisher, towards the furnishing of my house; as some others, that were no way suitors, did present me the like about that time.

9. To the ninth article of the charge, *videlicet*, In the cause between Kenneday and Vanlore, he received a rich cabinet from Kenneday, prized at eight hundred pounds: —

I confess and declare, That such a cabinet was brought to my house, though nothing near half the value; and that I said to him that brought it, that I came to view it, and not to receive it; and gave commandment that it should be carried back, and was offended when I heard it was not: and some year and a half after, as I remember, Sir John Kenneday having all that time refused to take it away, as I am told by my servants, I was petitioned by one Pinckney that it might be delivered to him, for that he stood engaged for the money that Sir John Kenneday paid for it. And thereupon Sir John Kenneday wrote a letter to my servant Shereborne, with his own hand, desiring I would not do him that disgrace as to return that gift back, much less to put it into a wrong hand: and so it remains yet ready to be returned to whom your Lordships shall appoint.

10. To the tenth article of the charge, *videlicet*, He borrowed of Vanlore a thousand pounds upon his own bond at one time, and the like sum at another time, upon his lordship's own bill, subscribed by Mr. Hunt, his man: —



I confess and declare, that I borrowed the money in the article set down; and that this is a true debt. And I remember well that I wrote a letter from Kew, about a twelvemonth since, to a friend about the King; wherein I desired, that whereas I owed Peter Vanlore two thousand pounds, his Majesty would be pleased to grant me so much out of his fine set upon him in the Star Chamber.<sup>1</sup>

11. To the eleventh article of the charge, *videlicet*, He received of Richard Scott two hundred pounds after his cause was decreed (but upon a precedent promise), all which was transacted by Mr. Shute:—

I confess and declare, that some fortnight after, as I remember, that the decree passed, I received two hundred pounds, as from Mr. Scott by Mr. Shute; but for any precedent promise or transaction by Mr. Shute, certain I am, I knew of none.

12. To the twelfth article of the charge, *videlicet*, He received in the same cause, on the part of Sir John Lentall, an hundred pounds:—

I confess and declare, that some months after, as I remember, that the decree passed, I received an hundred pounds by my servant Shereburne, as from Sir John Lentall, who was not the adverse party to Scott, but a third person, relieved by the same decree, in the suit of one Powre.

13. To the thirteenth article of the charge, *videlicet*, He received of Mr. Wroth an hundred pounds in respect of the cause between him and Sir Arthur Mainwaring:—

I confess and declare, that this cause being a cause for inheritance of good value, was ended by my arbitrament, and consent of parties; and so a decree passed of course.

<sup>1</sup> In a letter to Buckingham dated "Kew, December 12, 1619," he advises the King not to dispose of any of the fines of the Dutch merchants in gifts "Except the King should give me the £2,000 I owe Peter Vanlore out of his fine, which is the chief debt I owe. But this I speak but merrily." The sum was claimed afterwards from the executors as a debt on the estate. See note 1, p. 505.

And some month after the cause thus ended, the hundred pounds mentioned in the said article was delivered to me by my servant Hunt.

14. To the fourteenth article of the charge, *videlicet*, He received of Sir Ralph Hansby, having a cause depending before him, five hundred pounds: —

I confess and declare, that there were two decrees, one as I remember, for the inheritance, and the other for the goods and chattels, but all upon one bill; and some good time after the first decree, and before the second, the said five hundred pounds was delivered me by Mr. Tobye Mathew; so as I cannot deny but it was, upon the matter, *pendente lite*.

15. To the fifteenth article of the charge, *videlicet*, William Compton being to have an extent for a debt of one thousand and two hundred pounds, the Lord Chancellor stayed it, and wrote his letter, upon which part of the debt was paid presently, and part at a future day. The Lord Chancellor hereupon sends to borrow five hundred pounds; and because Compton was to pay four hundred pounds to one Huxley, his Lordship requires Huxley to forbear it six months, and thereupon obtains the money from Compton. The money being unpaid, suit grows between Huxley and Compton in Chancery, where his Lordship decrees Compton to pay Huxley the debt, with damages and costs, when it was in his own hands: —

I declare, that, in my conscience, the stay of the extent was just, being an extremity against a nobleman, by whom Compton could be no loser. The money was plainly borrowed of Compton upon bond with interest; and the message to Huxley was only to entreat him to give Compton a longer day, and in no sort to make me debtor or responsible to Huxley; and therefore, though I were not ready to pay Compton his money, as I would have been glad to have done, save only one hundred pounds, which is paid; I could not deny justice to Hux-

ley, in as ample manner as if nothing had been between Compton and me. But if Compton hath been damnified in my respect, I am to consider it to Compton.

16. To the sixteenth article of the charge, *videlicet*, In the cause between Sir William Bruncker and Awbrey, the Lord Chancellor received from Awbrey an hundred pounds:—

I do confess and declare, that the money was given and received; but the manner of it I leave to the witnesses.

17. To the seventeenth article of the charge, *videlicet*, In the Lord Mountague's cause, he received from the Lord Mountague six or seven hundred pounds; and more was to be paid at the ending of the cause:—

I confess and declare, there was money given, and (as I remember) by Mr. Bevis Thelwall, to the sum mentioned in the article, after the cause was decreed; but I cannot say it was ended; for there have been many orders since, caused by Sir Francis Englefeild's contempts; and I do remember that when Thelwall brought the money, he said that my Lord would be further thankful if he could once get his quiet; to which speech I gave little regard.

18. To the eighteenth article of the charge, *videlicet*, In the cause of Mr. Dunch, he received from Mr. Dunch two hundred pounds:—

I confess and declare, that it was delivered by Mr. Thelwall to Hatcher, my servant, for me, as I think, some time after the decree; but I cannot precisely inform myself of the time.

19. To the nineteenth article of the charge, *videlicet*, In the cause between Reynell and Peacock, he received from Reynell two hundred pounds, and a diamond ring worth five or six hundred pounds:—

I confess and declare, that at my first coming to the Seal, when I was at Whitehall, my servant Hunt de-

livered me two hundred pounds from Sir George Reynell, my near ally, to be bestowed upon furniture of my house; adding further, that he received divers former favors from me; and this was, as I verily think, before any suit begun. The ring was received certainly *pendente lite*; and though it were at New-year's tide, yet it was too great a value for a New-year's gift; though as I take it, nothing near the value mentioned in the article.

20. To the twentieth article of the charge, *videlicet*, He took of Peacock an hundred pounds, and borrowed a thousand pounds, without interest, security, or time of payment:—

I confess and declare, that I received of Mr. Peacock an hundred pounds at Dorset House, at my first coming to the Seal, as a present; at which time no suit was begun; and that the summer after, I sent my then servant Lister to Mr. Rolf, my good friend and neighbor at St. Albans, to use his means with Mr. Peacock (who was accounted a monied man) for the borrowing of five hundred pounds; and after, by my servant Hatcher, for borrowing of five hundred pounds more; which Mr. Rolf procured, and told me, at both times, it should be without interest, script, or note; and that I should take my own time for payment of it.<sup>1</sup>

21. To the one and twentieth article of the charge, *videlicet*, In the cause between Smithwick and Wich, he received from Smithwick two hundred pounds, which was repaid:—

I confess and declare, that my servant Hunt did, upon his account, being my receiver of the fines of original writs, charge himself with two hundred pounds, formerly received of Smithwick; which, after that I had understood the nature of it, I ordered him to repay it, and to default it of his account.

<sup>1</sup> This thousand pounds was claimed after Bacon's death from his executors as a debt due to Peacock from the estate. See note, p. 505.

22. To the two and twentieth article of the charge, *videlicet*, In the cause of Sir Henry Ruswell, he received money from Ruswell; but it is not certain how much: —

I confess and declare, that I received money from my servant Hunt, as from Mr. Ruswell, in a purse; and whereas the sum in the article is indefinite, I confess it to be three or four hundred pounds; and it was about some months after the cause was decreed; in which decree I was assisted by two of the judges.

23. To the three and twentieth article of the charge, *videlicet*, In the cause of Mr. Barker, the Lord Chancellor received from Barker seven hundred pounds: —

I confess and declare, that the sum mentioned in the article was received from Mr. Barker, some time after the decree passed.

24, 25, 26. To the four and twentieth article, five and twentieth, and six and twentieth articles of the charge, *videlicet*, The four and twentieth, there being a reference from his Majesty to his Lordship of a business between the grocers and the apothecaries, the Lord Chancellor received of the grocers two hundred pounds. The five and twentieth article: In the same cause, he received of the apothecaries that stood with the grocers, a taster of gold worth between £400 and £500, and a present of amber-grease. \*And the six and twentieth article: He received of the new company of the apothecaries that stood against the grocers, an hundred pounds: —

To these I confess and declare, that the several sums from the three parties were received; and for that it was no judicial business, but a concord or composition between the parties, and that as I thought all had received good, and they were all three common purses, I thought it the less matter to receive that which they voluntarily presented; for if I had taken it in the nature of a corrupt bribe, I knew it could not be concealed, because it

must needs be put to account to the three several companies.

27. To the seven and twentieth article of the charge, *videlicet*, He took of the French merchants a thousand pounds, to constrain the vintners of London to take from them fifteen hundred tuns of wine; to accomplish which, he used very indirect means by color of his office and authority, without bill or suit depending; terrifying the vintners by threats and imprisonments of their persons, to buy wines whereof they had no need nor use, at higher rates than they were vendible:—

I do confess and declare, that Sir Thomas Smith did deal with me in the behalf of the French company; informing me that the vintners by combination would not take off their wines at any reasonable prices. That it would destroy their trade, and stay their voyage for that year; and that it was a fair business, and concerned the State; and he doubted not but I should receive thanks from the King, and honor by it; and that they would gratify me with a thousand pounds for my travail in it; whereupon I treated between them by way of persuasion, and (to prevent any compulsory suit) propounding such a price as the vintners might be gainers £6 a tun, as it was then maintained to me; and after, the merchants petitioning to the King, and his Majesty recommending the business unto me, as a business that concerned his customs and the navy, I dealt more earnestly and peremptorily in it; and, as I think, restrained in the messengers' hands for a day or two some that were the most stiff; and afterwards the merchants presented me with a thousand pounds out of their common purse; acknowledging themselves that I had kept them from a kind of ruin; and still maintaining to me, that the vintners, if they were not insatiably minded, had a very competent gain. This is the merits of the cause, as it then appeared unto me.

28. To the eight and twentieth article of the charge, *videlicet*, The Lord Chancellor hath given way to great exactions by his servants, both in respect of private seals, and otherwise for sealing of injunctions : —

I confess it was a great fault of neglect in me, that I looked no better to my servants.

This declaration I have made to your Lordships with a sincere mind ; humbly craving that, if there should be any mistaking, your Lordships would impute it to want of memory, and not to any desire of mine to obscure truth, or palliate anything ; for I do again confess, that in the points charged upon me, although they should be taken as myself have declared them, there is a great deal of corruption and neglect ; for which I am heartily and penitently sorry, and submit myself to the judgment, grace, and mercy of the court.

For extenuation, I will use none concerning the matters themselves ; only it may please your Lordships, out of your nobleness, to cast your eyes of compassion upon my person and estate. I was never noted for an avaricious man. And the Apostle saith, that *covetousness is the root of all evil*. I hope also that your Lordships do the rather find me in the state of grace, for that in all these particulars there are few or none that are not almost two years old ; whereas those that have an habit of corruption do commonly wax worse and worse ; so that it hath pleased God to prepare me, by precedent degrees of amendment, to my present penitency. And for my estate, it is so mean and poor, as my care is now chiefly to satisfy my debts.

And so, fearing I have troubled your Lordships too long, I shall conclude with an humble suit unto you, that if your Lordships proceed to sentence, your sentence may not be heavy to my ruin, but gracious, and mixt with mercy ; and not only so, but that you would be no-

ble intercessors for me to his Majesty likewise, for his grace and favor.

Your Lordships' humble servant and suppliant,

FR. ST. ALBAN, Canc.

In requiring Bacon to make a particular instead of a general confession, the Lords acted strictly but fairly ; and if they had required of themselves to pronounce a judgment in like manner particular and not general, — a judgment stating which of the charges they found to be proved, and what penalties under what law he had thereby incurred, — I should have had no fault to find with the mode of proceeding, whatever weight I might have been disposed to give to the judgment of a body which seems to have understood so ill the art of judging, and which was not above the influence of fear and favor. Nor can I blame them for either of the steps which they took immediately after the reading of the confession. The first was to send a committee of twelve to tell him that they “conceived it to be an ingenuous and full confession ;” and ask him whether the subscription was in his hand, and whether he would stand to it or no ; who presently returned with his answer : —

“My Lords, it is my act, my hand, my heart. I beseech your Lordships, be merciful to a broken reed.”

The next was to move the King to sequester the seal ; who at once commissioned the Lord Treasurer, the Lord Steward, the Lord Chamberlain, and the Earl of Arundel, to receive and take charge of it ; to whom when, finding him very sick, they “wished it had been better with him,” he answered : —

“The worse the better. By the King's great favor I received the great seal ; by my own great fault I have lost it.”



These things (much to be regretted but inevitable) having been dispatched, the next business was to agree upon the sentence to be passed: a business which ought not, in my opinion, to have seemed to them so simple as they found it. The "full and ingenuous confession" which they had accepted as the ground for their censure, was sufficient to justify them in pronouncing, without further consideration, that he was guilty of "corruption;" but as to the degree and quality of the corruption it supplied a good deal of information which was new to them, and demanded (if the punishment was to be duly apportioned to the crime) a great deal of consideration, and raised several questions which ought to have been entertained, and the law concerning them inquired, settled, and declared. It was a cause of very great importance; almost, if not absolutely, the first of its kind. They could find no precedent near enough to serve as a guide. Some definition of the offense, recognized by the law, there may have been; but it was certainly not so familiar as not to need quoting, or so distinct as to make it an easy matter to say which of the confessed acts came within, and which lay without it. It is true that there must have been a strong popular impression of their illegality; for it was assumed and acted on without inquiry or contradiction: but a Court not learned in the law, deciding without appeal, has no right to go upon popular impressions, however general and however strong. If they had asked the Judges what constituted judicial bribery, and by what law it was made penal, and what the legal penalty was, the Judges (their official advisers in such matters) would have supplied them with the best opinion that could be had. Some questions there certainly were which had a very important bearing upon this particular case, and on which the popular impression was not decided. If the list of gratuities confessed to have been received, taken with the circumstances as

stated in the confession, be carefully examined, it will be found that most of them were received after the cause was ended, and without relation to any precedent promise. This Bacon himself "conceived to be no fault." "By the opinion of the civilians," it seemed, he said, "to be no offense." Upon that point at least, therefore, there was a doubt which it could not be right for such a Court, pronouncing sentence in such a cause, to pass in silence. It will be found also that more than half the charges rest upon the depositions of single witnesses: and though Coke would have been ready to assure them that the single witness whose evidence incriminates himself is more to be believed than three who have committed no crime, the rule would hardly apply in this case, when every witness whose evidence might convict him of the crime had been specially protected from all danger of the penalty. Facts stated on the authority of a single witness, and denied or admitted with material differences by the party accused, clearly form a distinct class. Nor could those which rested upon the evidence of more than one witness be admitted all alike, without questions or distinctions, as proved. Why did the Lords make such a point of having a more particular confession, when the confession before them admitted that the case deserved condemnation and censure? Because confession was required "to ground their sentence;" that is to say, because in a case which had not been tried they could not take for proved anything which had not been confessed. If so, it followed that where a fact was either denied in the confession or admitted with a difference, it ought to have been either omitted altogether from the grounds of censure or retained with the correction: so much of it as was confessed being taken for proved, and no more. Justice clearly required that cases of this kind should be distinguished from the rest, and treated separately. Even those which were best proved and most to the purpose —

cases of gifts confessed to have been received from suitors whose causes had not been finally disposed of — were not all alike. There were many among them in which the suit passed through so many stages, and came back again so often after seeming to be disposed of, that a man with many other things to think of might easily be unaware that he had anything more to do with it, and yet it might be still pending. If the ignorance was real, such cases belonged morally to the class of gifts received after the cause was at an end, and were entitled to the same distinction. The collection was further swelled by cases in which Bacon had acted as arbitrator or mediator by consent of the parties, and in which one or both, feeling themselves obliged by his services, had expressed the sense of obligation after the fashion of the time, by a present of money or money's worth. Such presents were analogous to those usually made to negotiators or ambassadors: which nobody thought wrong. These again, if admitted into the charge at all (which I think they should not have been), ought at least to have been distinguished in the judgment as not implying corruption. Others again were not gifts at all, but sums of money borrowed, and recoverable as debts;<sup>1</sup> and though all money transactions between the Judge and the suitor may have been justly censurable, as exposing the Judge to the suspicion, and likely to betray him into the practice of corruption, yet a money-lender, like a wine-merchant or a tailor, may happen to have a suit in Chancery; and as the Lord Chancellor might in the one case order his usual supply of wine or clothes without incurring suspicion of a corrupt intention, so in the other he might borrow a sum of money (being a practice to which he

<sup>1</sup> Three of these cases gave rise after Bacon's death to a curious question. Being claimed by the lenders as debts due to them from the estate, the executors pleaded that they had been decided by the House of Lords to be bribes. See note to Lord Campbell's *Lives of the Chancellors*, 3d edition, vol. iii., p. 146.

had all his life been too much addicted) without deserving it.

For the formation of a just judgment, it was obviously necessary to take all points like these into consideration. Not being themselves men of science in law, nor disposed to take advice of such as were, we must suppose that the Lords went by common sense; and common sense must have cried out that if they meant to make a precedent for the benefit of posterity in passing judgment upon a great offender, they must clearly understand and make understood what the offenses were of which he had been proved guilty;—that their first business therefore was to ascertain how many of the facts alleged were proved true, whether by evidence or confession; then, of those proved true, how many implied corruption or otherwise transgressed the law; and lastly, of those proved corrupt in construction of law, how many implied real corruption in the shape of a bargain which was to influence the judgment. Common sense must have told them that this could only be done by taking the charges separately, and discussing them one by one; and though they were not a body well qualified or well trained for such discussions, the order of proceeding was obvious and easy. The charges were set out in twenty-eight articles. To each article was appended Bacon's confession and declaration; which included all the defense which he thought fit to offer. Each charge might be taken in succession, and the question debated whether, upon that charge, he was guilty or not guilty. All reasonable considerations should have found in a committee of the whole House some advocate to represent them: and if questions of law intervened, the Judges were within reach and would advise. When the whole list had been gone through in this way, they would have known, or done their best to know, what the offense amounted to; and would have been in a condition to consider what punishment it de-

served. And here also they would or should have met with a question, materially affecting the moral aspect of these practices, and material therefore to the apportionment of the penalty; namely, What was the custom and what was the opinion with regard to gift-taking by Judges in those days? How far was the practice common, and how far was it tolerated? Had Bacon in short done more than other Chancellors had been in the habit of doing, and doing without reproach? It is a question hardly possible to answer now. But at that time in a committee of the whole House of Lords there were probably some who could have thrown light upon it if they chose. On comparing the very moderate fees and allowances assigned at that time to the officers and ministers of justice, — £1,047 15s. to the Lord Chancellor, £238 6s. 8d. to the Lord Chief Justice, £132 17s. 4d. to the Lord Chief Baron, etc., — with the considerable incomes spent or the large fortunes accumulated during the tenure of those offices, many people think that a great part of their receipts must really have been derived from gratuities of one kind or another. And if as searching a light could be thrown upon the proceedings of former Chancellors, I should not be surprised to find that the taking of gifts from suitors was one of those practices which, though everybody knew them to be illegal, and nobody would undertake publicly to justify them, were nevertheless not only generally indulged in by those who received the profit, but generally known of and tolerated by others who had no share in it; — that the silver flagons sent by the suitor to Sir Thomas More<sup>1</sup> were an example of the ordinary practice, while the witty and graceful rebuke represented the exceptional integ-

<sup>1</sup> "Sir Thomas More had sent him by a suitor in the Chancery two silver flagons. When they were presented by the gentleman's servant he said to one of his men, 'Have him to the cellar and let him have of my best wine;' and turning to the servant, said, 'Tell thy master, friend, if he like it let him not spare it.'" Apophthegms, No. 24.

riety of the man : one of those moral geniuses that rise into eminent place once perhaps in a century (only that in that case there must have been fourteen others between the birth of More and of Christianity, and I think it would be difficult to count them up) and illustrate the practice of their times by contrast. Upon this point, however, I have not myself seen any evidence which seems conclusive ; and I only say here that it was one which the House of Lords, in its capacity of Supreme Court of Justice, had to consider and take into account. When they had settled this, there would still remain the great question of all — whether there was reason to believe that in any one of these cases the judgment had been in any way influenced by the gift : a question which is not distinctly raised by the accusation, because no such charge is contained in any of the articles ; but which makes so great a distance in the moral character of the transaction, than in apportioning the punishment to the offense they could not pass it by.

Any man seriously endeavoring to understand and estimate the nature of Bacon's delinquency must feel that without taking things like these into consideration, it cannot be done : and if so, it must have been the business of the Lords to consider them before they pronounced sentence. How they set about it we have not, till within the last three years, had any means of knowing, further than that what they did they did quickly ; for the Lords' Journals tell us nothing of what passed in committee, except the result as embodied in the subsequent action of the House. But the publication in 1870 by the Camden Society of Elsing's Notes of the Debates during part of this session has given us some insight into the interior : and though the notes are short, we gain from them a tolerably clear idea of the manner in which this important deliberation was transacted.

The seal had been delivered up and put in commission

on the 1st of May. On the 2d, towards the end of the sitting, —

“Agreed to proceed in the business of the Lord Chancellor to-morrow morning.

“SOUTHAMPTON. The L. Chancellor to have notice and warning to be here then to hear his sentence by 9. The collection of the charges, proofs, and confession, to be considered of by a Committee.

“ARCH. CANTERBURY. The Lower House to have notice that they come to crave judgment.

“Agreed, the Gentleman Usher and the Serjeant-at-Arms to warn the L. Chancellor, and to bring him hither.

“The House resumed. . . .

“The Usher and Serjeant to summon the L. Chancellor to appear here in person to-morrow by 9. All the Judges to be here in their robes, save one in each court. The Lower House to be sent for. The Serjeant to carry his mace, and to show it him, but not to carry it before him as he did when he had the seal.

*Adjournatur to 9 to-morrow.*

DIE JOVIS, 3 MAII, 1621.

“THE GENTLEMAN USHER and MR. SERJEANT. That they find the L. Chancellor is sick in bed. He answered that he is so sick that he is not able to repair hither; that this is no excuse, for if he had been well he would willingly have come.

“RICHMOND. The charge and confession of the L. Chancellor to be read and compared.

“It was read per Mr. Attorney at the clerk’s table.

“L. CHIEF JUSTICE. First to know orders: —

“1. Whether to mention the rejection of the former imperfect answer.

“2. Many witnesses examined; whether to take notice of these examinations, or the second submission.

“3. Whether to convict him upon every particular, or the general.

“Question: Such of the Lords as are of opinion that the L. Chancellor is guilty of the offenses as he hath been charged withal, etc., to say Content.

"The question being put, they all agreed that the L. Chancellor is guilty of the matters wherewith he is charged, *nemine dissentiente*."

So that matter was easily settled. They had heard the charge read again and compared with the confession, and they were of opinion that he was in a general way guilty of whatever the charge contained. No distinctions taken. Though they thought they could not sentence without confession, they could find him guilty of what he had not confessed as well as what he had.

The question of guilt being thus disposed of, then came the question of the punishment.

"THE L. CHIEF JUSTICE. That they proceed to speak of his punishment.

"The clerk to take notes of every man's opinion for the kind of punishment.

"HUNTINGDON. The House to be adjourned *ad libitum*.

"PRINCE. A precedent of former Chancellors, the like of fense, and what punishment hath been inflicted on them.

"ARUNDEL. This motion good, if there be any such precedents.

"L. CHAMBERLAIN. Michaell de la Poole questioned for changing of lands with the King.

"HUNSDON delivered some notes of judgments against Poole, Thorp, etc. Read, and he received the note back.

*Adjournatur ad libitum.*

"WENTWORTH. If Poole his case concerns this, to be read to the House.

"SPENCER. The King said he would make it a precedent to posterity. Not to trench to life banishment, etc.

"ARUNDEL. His offenses foul, his confession pitiful. Life not to be touched.

"L. CHAMBERLAIN. A fine, ransom, and imprisonment.

"SHEFFIELD. Not to be capable hereafter of any office of judicature or councillor's place.

"SAYE. To be degraded during life, for unfit to sit here again amongst us.



"ARUNDEL. Not to be degraded.

"L. CHAMBERLAIN. To fine, ransom, imprisonment. Un-  
capable of any public office, etc. Not to be degraded.

"SOUTHAMPTON. We cannot guide our sentence by any pre-  
cedent, to make an example of this such as posterity may give  
us thanks for. Banishment or not? Degradation? Opinion  
that he is fit to be degraded, being made incapable of any office  
in the State or Commonwealth. At the least to be degraded  
during life, and banished from ever coming near the Court.

"RICHMOND. Against degradation.

"SPENCER. A man may be attainted, and yet his honor re-  
main, and alleged precedents of many.

"SAYE. *Prout antea pro vita.*

"L. CHAMBERLAIN. Put it to the question whether to be  
degraded *durante vita.*

"SOUTHAMPTON. Not to be banished, though worthy.

"L. TREASURER. Fine, etc. No honor touched here, but  
by way of loss of office, etc. Bill only. Agrees with the L.  
Chamberlain.

"CAMBRIDGE. Agrees to all save degradation, for that he  
hath made so clear and ingenuous confession which men of his  
sort do not. Agrees with L. Chamberlain.

"PRINCE. Agrees with Cambridge.

"CAMBRIDGE. The Lord Chancellor never to sit here, nor  
come near the Court.

"ARUNDEL. *Idem cum* L. Treasurer, not to be degraded  
here, which is not usual but by way of bill. To be put to the  
question.

"DURESME. Not to be degraded, as he may remember from  
whence he hath fallen.

"SOUTHAMPTON. Whether he whom this House thinks unfit  
to be a constable shall come to the Parliament?

"He never to come to Parliament again.

"L. ADMIRAL.<sup>1</sup> The Lord Chancellor so sick that he cannot  
live long.

"SOUTHAMPTON.

The House resumed.

"L. CH. JUSTICE. Question, whether the L. Chancellor —

<sup>1</sup> Buckingham.

"L. CHAMBERLAIN. We agree he lose his place in Parliament during life.

"Question: Whether the Viscount St. Albans shall be suspended of all his titles of nobility during his life, or no?

"Agreed *per plures*, not to be suspended, etc.

"1. The fine and ransom, £40,000.

"2. Imprisonment during the King's pleasure in the Tower.

"3. Un capable of any office, place, or employment in the State or Commonwealth.

"4. Never to sit in Parliament, nor to come within the verge of the Court.

"Put to the question, whether these punishments above shall be inflicted upon the L. Viscount St. Alban or no?

"Agreed. *Dissentiente* L. Admiral."

This was the whole judicial proceeding. It remained only to pronounce the sentence, — which was done with due ceremony, as described in the journals.

"The Lords having agreed upon the sentence to be given against the Lord Chancellor, did send a message to the House of Commons,

by { Mr. Serjeant Crew,  
      { Mr. Serjeant Hitcham :

"That the Lords are ready to give judgment against the Lord Viscount St. Alban, Lord Chancellor, if they, with their Speaker, will come to demand it.

"In the mean time the Lords put on their robes ; and answer being returned of this message and the Commons come ;

"The Speaker came to the Bar, and, making three low obeisances, said, —

"'The Knights, Citizens, and Burgesses of the Commons House of Parliament have made complaint unto your Lordships of many exorbitant offenses of bribery and corruption committed by the Lord Chancellor. We understand that your Lordships are ready to give judgment upon him for the same. Wherefore I, their Speaker, in their name, do humbly demand and pray judgment against him the Lord Chancellor, as the nature of his offense and demerits do require.'

"The Lord Chief Justice answered: 'Mr. Speaker, upon the complaint of the Commons against the Lord Viscount St. Alban, Lord Chancellor, this High Court hath thereby, and by his own confession, found him guilty of the crimes and corruptions complained of by the Commons, and of sundry other crimes and corruptions of like nature.

"And therefore this High Court (having first summoned him to attend, and having received his excuse of not attending by reason of infirmity and sickness, which he protested was not feigned, or else he would most willingly have attended) doth nevertheless think fit to proceed to judgment; and therefore this High Court doth adjudge:—

"1. That the Lord Viscount St. Alban, Lord Chancellor of England, shall undergo fine and ransom of forty thousand pounds.

"2. That he shall be imprisoned in the Tower during the King's pleasure.

"3. That he shall forever be incapable of any office, place, or employment in the State or Commonwealth.

"4. That he shall never sit in Parliament, nor come within the verge of the Court.<sup>1</sup>

"This is the judgment and resolution of this High Court."

The Prince his Highness was entreated by the House, that, accompanied with divers of the Lords of this House, he would be pleased to present this sentence given against the late Lord Chancellor unto his Majesty. His Highness was pleased to yield unto this request.

"There is a judicature for impeachment," says Hargrave in his preface to Hale's "*Jurisdiction of the House of Lords*," "and under it, on the one hand, the Commons,

<sup>1</sup> Clarendon must have forgotten this judgment when, speaking of the impeachment of the Earl of Middlesex three years after, he says: "But the Duke's power (supported by the Prince's countenance) was grown so great in the two Houses, that it was in vain for the King to interpose; and so (notwithstanding so good a defense made by the Earl, that he was absolved from any notorious crime by the impartial opinion of many of those who heard all the evidence) he was at last condemned in a great fine, to a long and strict imprisonment, and never to sit in Parliament during his life; a charge of such a nature as was never before found in any judgment of Parliament, and in truth not to be inflicted on any Peer but by attainder." — *History of Rebellion*, p. 64.

as the great representative inquest of the nation, first find the crime, and afterwards, acting as prosecutors, endeavor to support their finding before the Lords ; whilst, on the other hand, the Lords exercise the function both of Judge and Jury, in trial of the cause and in deciding upon it." It appears, however, according to the same authority, that the Lords had not been called on to perform this office for two hundred years. " From the 3d of Henry V. to the accession of James I., there appears to have been little exercise of judicature in Parliament civilly, or indeed criminally ; unless the cruel precedents of acts of attainder without hearing the accused, and the indulgent precedents of acts of restitution without assignment of errors, of both of which the number is great, are fit to be considered as judicial records."

First attempts should not be judged too severely, and this was the first attempt of the persons then composing the House of Lords to exercise the combined offices of Judge and Jury. Not having either precedents of their own to follow or analogous proceedings in other courts to imitate ; being untrained in judicial business of any kind ; proceeding without rules, order, or organization ; acting by turns as judge without jury and jury without judge ; settling questions of law and questions of fact and questions of justice alike by the majority of votes ; it is not surprising that both in trying the cause and in deciding upon it they merely reflected and gave effect to the passion of the time. As the passion of the time had some reason in it, so had their decision some justice. It had also, as it happened, — what was more important, — a great constitutional value : it inflicted upon an abuse which had been heretofore tolerated a punishment which made it thereafter infamous. All questionable transactions between Judges and suitors were from that day at an end in England. For this purpose it fortunately happens that an unjust sentence does as well as a just one,

— perhaps better : and though it falls hard upon the victim, the nation receives the benefit. But as a decision upon the questions either of law or of fact or of justice which the charge involved, I cannot think, considering the method by which it was arrived at, that it deserves any credit whatever. As a precedent of the manner of proceeding in such cases, it cannot be recommended as an example to be followed, in any part of it. And as for the character and complexion of the offense, so little consideration was used in the inquiry that whoever cares to form an estimate of that must try the case over again for himself upon such evidence as is now attainable. Bacon never allowed himself to dispute the justice of the sentence to which he had undertaken to submit. But his confession contains his own judgment upon his own case ; and though we cannot test it by comparison with the depositions upon which the judgment of the Lords was really based, and which he never saw, we can try it by its correspondence with some other facts not known to them ;<sup>1</sup> and their impression of the effect of those depositions will not be accepted as conclusive by those who have studied the rest of their proceedings during that and the two following weeks.

<sup>1</sup> See below, p. 626-636.

## CHAPTER IV.

A. D. 1621-1623. MAY-OCTOBER. *ÆTAT.* 61-63.

WHAT remained of the sentence which they had passed during those weeks upon Edward Lloyde — an old gentleman who had spoken of the new Queen of Bohemia as “goodwife Palsgrave,” and whom for that offense only they had condemned to the pillory, the whipping-cart, perpetual infamy, a fine of £5,000, and imprisonment in Newgate for life — might be remitted by the King as soon as he was forgotten. But Bacon could not be forgotten : and as in the judgments of this world confession and penitence prove guilt but earn no absolution, his disgrace remained with him and his punishments could not be dispensed with or remitted. The disposition to take his part as much as they could, which had been shown by the Prince and Buckingham, and to a certain extent by the Court party in general, appears to have excited an apprehension that his ruin was not complete, and that he might rise again : an apprehension which pursued him to the end ; there being always somebody, whenever a proposal was made for his relief, to object to it as disrespectful to Parliament.

The following note of the proceedings in the House of Lords on the 12th of May, shows how active and impatient this jealousy was.

“SOUTHAMPTON. That the L. Chancellor is not yet gone to the Tower ; moved that the world may not think our sentence is in vain.

"L. ADMIRAL. The King hath respited his going to the Tower in this time of his great sickness.

"SHEFFIELD. A warrant from the House to commit the late L. Chancellor to the Tower."<sup>1</sup>

As there is nothing to be found about this in the Journals, I suppose the motion was not carried, but withdrawn upon an understanding that he would be sent to the Tower as soon as his health permitted. He was sent accordingly before the end of the month: and so far, the Lords had the satisfaction of proving to the world that their sentence had not been in vain. But as the words of it were that he was to be "imprisoned in the Tower during the King's pleasure," they could not complain of his being released as soon as it was the King's pleasure that he should be imprisoned no longer. The exact date and duration of his imprisonment is not certainly known; at least our authorities do not exactly agree. Chamberlain, writing on the 2d of June (which was Saturday), says that he went to the Tower in "the beginning of the week;" and afterwards writing on the 9th, reports that he came out on the 2d; Camden, in his "*Annalium Apparatus*," says that he remained only two days, but does not give the date either of his entrance or his exit. What we know is that he was in the Tower on the 31st of May, and out on the 4th of June, as will be seen by the following letters:—

<sup>1</sup> Elsing, p. 79. It appears, however, that the blow was aimed, not so much against Bacon as against Buckingham, who was supposed to be shielding him, and against whom there was a strong party in the Upper House, headed by Southampton. "The rumor lately spread," says Sir Anthony Ashley, writing on the same day, "touching his Majesty's untimely pardon of the late Lord Chancellor's fine and imprisonment, with some other favors intended towards him (said to be procured by your Lordship's only intimation), hath exceedingly exasperated the rancor of the ill-affected; which, albeit it be false, and unlikely, because very unseasonable, it doth yet serve the present turn for the increase of malice against you. I can but inform your Lordship of what I understand. You may please to make use thereof as yourself thinketh best."—*Cabala*, p. 2.

## TO THE MARQUIS OF BUCKINGHAM.

GOOD MY LORD, — Procure the warrant for my discharge this day. Death, I thank God, is so far from being unwelcome to me, as I have called for it (as Christian resolution would permit) any time these two months. But to die before the time of his Majesty's grace, and in this disgraceful place, is even the worst that could be; and when I am dead, he is gone that was always in one tenor, a true and perfect servant to his master, and one that was never author of any immoderate, no, nor unsafe, no (I will say it) not unfortunate counsel; and one that no temptation could ever make other than a trusty, and honest, and thrice loving friend to your Lordship; and howsoever I acknowledge the sentence just, and for reformation sake fit, the justest Chancellor that hath been in the five changes since Sir Nicholas Bacon's time. God bless and prosper your Lordship, whatsoever become of me.

Your Lordship's true friend, living and dying,

FR. ST. ALBAN.

TOWER, 31st May, 1621.

## TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — I heartily thank your Lordship for getting me out of prison, and now my body is out, my mind nevertheless will be still in prison, till I may be on my feet to do his Majesty and your Lordship faithful service. Wherein your Lordship, by the grace of God, shall find that my adversity hath neither spent nor pent my spirits. God prosper you.

Your Lordship's most obliged

friend and faithful servant,

FR. ST. ALBAN.

4 June, 1621.



## TO THE KING,

MAY IT PLEASE YOUR MOST EXCELLENT MAJESTY, —  
I humbly thank your Majesty for my liberty, without which timely grant, any further grace would have come too late. But your Majesty that did shed tears in the beginning of my trouble, will I hope shed the dew of your grace and goodness upon me in the end. Let me live to serve you, else life is but the shadow of death to

Your Majesty's most devoted servant,

FR. ST. ALBAN.

4 June, 1621.

The next letter has no date, but the allusion to what took place "yesterday" makes it probable that it was written on the 5th of June. On the 4th, when Parliament was about to adjourn till November, it was moved in the Lower House by Sir J. Perrot, that since the King at the beginning of the Parliament "made his protestation about the Palatinate, to adventure himself, his son, and all his estate," they on their part should make a public declaration before their departure "that at their next access they would, if the King should require it, adventure themselves and all their estates in defense of Religion, etc. Which he hoped, being known abroad, would facilitate his Majesty's treaties with foreign princes." The motion was supported by Sir Robert Phelips, as tending to advance the reputation of the country abroad, and proposed in the following shape: —

"To declare that if his Majesty shall not by peace obtain the settlement of true religion, which now shaken, and the recovery of the Palatinate, we all undertake for the several shires and places for which we serve [that we] will adventure all our fortunes, of lives and estates for those services."

The motion being put up by the Speaker was, "by a general acclamation and waving of hats, allowed."

Towerson, the merchant, was ready to answer for London; declaring that if ten subsidies would not serve, twenty should; if twenty were not enough, thirty would be forthcoming. And if words would equip armies and keep them in fighting trim, the Palatinate would have been easily recovered. It remained to be seen whether, when it came to the point, ten subsidies would be easily raised; and a declaration like this, hastily adopted at the close of a session in the course of which (but for their fury against Edward Lloyd) it might have seemed that they had forgotten the Palatinate altogether, was not a security that could be relied upon. Still it was valuable as far as it went. They had got through a session without any open quarrel with the King, which was matter for congratulation. And the results were fairly summed up by Sir Henry Savile in a letter to Carleton, a few days after.

“We have made an end of our session of Parliament, where nothing is passed but eighteen or twenty weeks (as Popham said to Q. Elizabeth) and two subsidies, besides some censures upon great persons. I am sorry for the persons, but *exemplum placet*. The like hath not been done these 500 years. I send you here a declaration of the Commons House made to the King touching your affairs *par de la*. It is not nothing, though you will say it is not much. At least it declareth the good and perfect union between the King and his subjects.”

It was the passing of this Declaration that made it “a day of great honor to his Majesty.”

#### TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — I hear yesterday was a day of very great honor to his Majesty, which I do congratulate. I hope also his Majesty may reap honor out of my adversity, as he hath done strength out of my prosperity. His Majesty knows best his own ways, and for me to despair of him were a sin not to be forgiven. I thank God I

have overcome the bitterness of this cup by Christian resolution, so that worldly matters are but mint and cumin. God ever preserve you.

Bacon had gone from the Tower to Sir John Vaughan's house at Fulham, — the house (says Chamberlain) that was Sir Thomas Smith's,<sup>1</sup> — and having partly recovered his health, was at leisure to review his position and consider how to make the best of what remained. It was no pleasant survey either in the retrospect or the prospect. Surprised and incredulous as he had been at first, when in the middle of his fullest sea and fairest weather he found himself suddenly among the breakers, it was now full two months since he had seen the whole length and breadth of his mischance: and to a man who was not a worldling, I suppose a more mortifying and irritating mischance could hardly have happened. Had it been merely a political overthrow, it would have been mortifying enough, because of the issues which were at stake. Had the loss of fortune only and reputation in the world's eyes been added, especially if in consequence of any negligence or oversight of his own, it would have been so much the worse. But still he would have had Job's consolation: he could have boldly stood upon his integrity and challenged censure. But to see all go, and to feel that he had only himself and his own fault to blame, even though the blame were not much in itself, was a terrible catastrophe, when one considers all that it involved. A little leaven leaveneth the whole lump. That little drop of admitted guilt changed the whole color of his life, past and to come. All his life he had had an eye to the future as well as to the present; had been laboring to set patterns for imitation, and to give the weight of his example and authority to precedents of reform: and I am persuaded for my own part that, if he

<sup>1</sup> Bacon's early friend, who died in December, 1609.

had died before Christmas 1620, his example and authority upon all questions of business, politics, administration, legislation, and morals, would have stood quite as high and been as much studied and quoted, and with quite as good reason, as it has upon questions purely intellectual. All his life he had been studying to know and to speak the truth; and I doubt whether there was ever any man whose evidence upon matters of fact may be more absolutely relied on, or who could more truly say with Kent, in Lear, —

All my reports go with the modest truth;  
Nor more, nor clipp'd; but so.

All his life he had thought more of his duty than his fortune; setting an example of unwearied alacrity in all willing service, of moderation in personal claims and pretensions, of cheerful submission under personal disappointments; doing with his heart whatever his hand found to do, without consideration of reward. It must have been a bitter hour, when he looked round him and saw that all this was to go for nothing, or worse than nothing; that for his best virtues he could never more either ask or expect credit with the world, but must expect, on the contrary, that they would be turned to his prejudice, each virtue being laid to the account of the vice which it most resembled. The fatal word "corruption" was written indelibly against his name, and he knew that all his actions would be interpreted by the world accordingly, — that is, in the worst sense: willing service would pass for servile officiousness; honorable desire of station and power, for mercenary and selfish ambition; professions of honesty and disinterestedness, for hypocritical affectation; his ways would be pointed at as examples to be shunned, not followed; his words and judgments as to be suspected, not believed. *Corruptio optimi pessima*. He knew the nature of popular judgment too well to look for any better issue. That along

with his reputation he had lost the means of living was a serious aggravation. For he had spent his income so freely that he had laid by nothing and was far in debt : and the vocation to which he was now called was one by which money could not be made, yet which could not be pursued successfully without. Leisure and peace of mind are indispensable conditions of successful study : and they cannot be enjoyed by a man who is in continual trouble for means to quiet his creditors and pay his weekly bills. Hopes, however, and encouragements, were not altogether wanting, and about the call itself there could be no doubt. It was to contribute what he could to the realization of the sacred vision of his early youth ; which had attended him through all his fortunes, in which he had lost neither faith nor interest ; the accomplishment of which he held to be merely a matter of time, and its importance beyond all measure or calculation. It was to prophesy and prepare the way for the coming of the Kingdom of Man. All his life he had been wishing to be free to devote himself to this work, though the time had never come when some other service did not put in a claim which seemed at the moment to be more urgent. Being now, though not honorably, yet effectually discharged from other demands upon his activity, the first aspirations of returning health pointed to this ; as we see in the few words addressed the next day to Gondomar, in acknowledgment of a letter expressing regret that he had so little power to repay him in his adversity for the kindness which he had received from him in his prosperity ; and offering, if he thought it would do any good, to engage the King of Spain to intercede with the King of England on his behalf : an offer which could only be gratefully and handsomely declined.

TO THE COUNT GONDOMAR, AMBASSADOR FROM THE  
COURT OF SPAIN.<sup>1</sup>

ILLUSTRISSIME DOMINE LEGATE, — Amorem illustrissimæ Dominationis tuæ erga me, ejusque et fervorem et candorem, tam in prosperis rebus quam in adversis æquali tenore constantem perspexi. Quo nomine tibi meritas et debitas gratias ago. Me verò jam vocat et ætas, et fortuna, atque etiam Genius meus, cui adhuc satis morosé satisfeci, ut excedens è theatro rerum civilium literis me dedam, et ipsos actores instruam, et posteritati serviam. Id mihi fortasse honori erit, et degam tanquam in atriis vitæ melioris. Deus illustrissimam Dominationem tuam incolumem servet et prosperam.

Servus tuus,

FR. ST. ALBAN.

6 Junii, 1621.

In the same spirit, and I suppose about the same time, he wrote to Toby Matthew, whose constant affection through all varieties of both their fortunes cannot but be thought greatly to the honor of both. What Matthew felt when he heard of the impeachment, and the issue of it, may be imagined by those who know his opinion of Bacon's character, as set forth only three years before for the information of the Grand Duke of Tuscany, in the dedicatory letter prefixed to an Italian translation of the "Essays and Wisdom of the Ancients." In which, after some account of his career and position, and a description of his intellectual powers, vigorously and justly drawn,

<sup>1</sup> Your Excellency's love towards me I have found ever warm and sincere alike in prosperity and adversity. For which I give you due thanks. But for myself, my age, my fortune, yea, my Genius, to which I have hitherto done but scant justice, calls me now to retire from the stage of civil action and betake myself to letters, and to the instruction of the actors themselves, and the service of Posterity. In this it may be I shall find honor, and I shall pass my days as it were in the entrance halls of a better life. May God keep your illustrious Lordship safe and prosperous. — Your servant, F. St. A.

he goes on to say that the praise is not confined to the qualities of his intellect, but applies as well to those which are rather of the heart, the will, and the moral virtue; being a man most sweet in his conversation and ways, grave in his judgments, invariable in his fortunes, splendid in his expenses; a friend unalterable to his friends; an enemy to no man; a most hearty and indefatigable servant to the King, and a most earnest lover of the Public, — having all the thoughts of that large heart of his set upon adorning the age in which he lives, and benefiting as far as possible the whole human race.

“And I can truly say,” he adds “(having had the honor to know him for many years, as well when he was in his lesser fortunes as now that he stands at the top and in the full flower of his greatness), that I never yet saw any trace in him of a vindictive mind, whatever injury were done him, nor ever heard him utter a word to any man’s disadvantage which seemed to proceed from personal feeling against the man, but only (and that, too, very seldom) from judgment made of him in cold blood.

“It is not his greatness that I admire, but his virtue; it is not the favors I have received from him (infinite though they be) that have thus enthralled and enchained my heart, but his whole life and character; which are such that, if he were of an inferior condition I could not honor him the less, and if he were my enemy I should not the less love and endeavor to serve him.”

Matthew never had an opportunity of showing how he would have felt towards Bacon as an enemy, but he gave ample proof that the loss of greatness made no difference. His regard for him could hardly be greater than it had been before, and it certainly suffered no diminution. What words he wrote to him on hearing of the impeachment and the issue of it we do not know, but we may infer their tenor from the reply. What we have of it is

probably only an extract, and is stripped as usual of all personal allusions and other particulars which might help to fix the exact date. But I think it suits this time better than any other. Matthew was still abroad, waiting impatiently for leave to return to England, which Digby was endeavoring to obtain for him.

[TO MR. MATTHEW.]

SIR, — I have been too long a debtor to you for a letter, and especially for such a letter, the words whereof were delivered by your hand, as if it had been in old gold. For it was not possible for entire affection to be more generously and effectually expressed. I can but return thanks to you ; or rather, indeed, such an answer as may better be of thoughts than words. As for that which may concern myself, I hope God hath ordained me some small time, whereby I may redeem the loss of much. Your company was ever of contentment to me, and your absence of grief : but now it is of grief upon grief. I beseech you, therefore, make haste hither, where you shall meet with as good a welcome as your own heart can wish.

There was one other person to whom Bacon owed a letter of acknowledgment. The Prince had done what he could, though it was not much, first to induce the Lords to accept his submission and spare the sentence altogether, afterwards to move for an inquiry into the precedents of similar proceedings that they might be guided by them, and finally to mitigate the severity of the sentence which they proceeded in the absence of precedents to pronounce. The next letter expresses Bacon's sense of obligation for these favors.



## TO THE PRINCE OF WALES.

IT MAY PLEASE YOUR HIGHNESS, — When I call to mind how infinitely I am bound to your Highness, that stretched forth your arm to save me from a sentence; that took hold of me to keep me from being plunged deep in a sentence; that hath kept me alive in your gracious memory and mention since the sentence; pitying me as (I hope) I deserve, and valuing me far above that I can deserve; I find my words almost as barren as my fortunes, to express unto your Highness the thankfulness I owe. Therefore I can but resort to prayers to Almighty God to clothe you with his most rich and precious blessings, and likewise joyfully to meditate upon those he hath conferred upon you already; in that he hath made you to the King, your father, a principal part of his safety, contentment and continuance: in yourself so judicious, accomplished, and graceful in all your doings, with more virtues in the buds (which are the sweetest) than have been known in a young Prince, of long time; with the realm so well beloved, so much honored, as it is men's daily observation how nearly you approach to his Majesty's perfections; how every day you exceed yourself; how, compared with other Princes which God hath ordained to be young at this time, you shine amongst them; they rather setting off your religious, moral, and natural excellencies, than matching them, though you be but a second person. These and such like meditations I feed upon, since I can yield your Highness no other retribution. And for myself, I hope by the assistance of God above (of whose grace and favor I have had extraordinary signs and effects during my afflictions) to lead such a life in the last acts thereof, as whether his Majesty employ me, or whether I live to myself, I shall make the world say that I was not unworthy such a patron.

I am much beholding to your Highness's worthy servant Sir John Vaughan, the sweet air and loving usage of whose house hath already much revived my languishing spirits; I beseech your Highness, thank him for me. God ever preserve and prosper your Highness.

Your Highness's most humble,  
and most bounden servant,

FR. ST. ALBAN.

7 June, 1621.

To live to serve the King in one way or another was Bacon's professed desire and hope: but the first service which the King proposed to him contrasted strangely with the position in which he now stood. The man who had only escaped being hunted down as the aider and abettor of the most grievous monopolies, by being convicted of a higher crime, — namely, corruption in one of the highest seats of judicature, — was called upon for advice as to the reformation of the Courts of Justice and the relieving of the grievances of the people. His answer to the call, which he has himself preserved, is not dated, but must have been written during this interval, while he was still allowed as a special favor to linger within the forbidden precinct of the verge. For we learn by the docket that it was "immediately after the breaking up of the first session of Parliament;" and the declaration which it recommends was to be made on "the morrow of this term" — that is, the day after the end of Trinity term, 1621; which was the 21st of June.

It will be observed that the reasons given at the conclusion for going no further into particulars, though pertinent and sufficient, are not those of a man eager to recover a political career; towards which the execution of such a task by the King's command for the King's service would undoubtedly have been a step.

## TO THE KING.

IT MAY PLEASE YOUR MAJESTY, — For that your Majesty is pleased to call for my opinion concerning the sacred intention you have to go on with the reformation of your courts of justice, and relieving the grievances of your people, which your Parliament hath entered into; I shall never be a recusant (though I be confined) to do your service.

Your Majesty's Star Chamber, next your court of Parliament, is your highest chair. You never came upon that mount but your garments did shine before you went off. It is the supreme court of judicature ordinary; it is an open council. Nothing I would think can be more seasonable (if your other appointments permit it) than if your Majesty will be pleased to come thither in person, the morrow of this term (which is the time anniversary before the circuits and the long vacation) and there make an open declaration: That you purpose to pursue the reformation, which the Parliament hath begun.

That all things go well in all affairs, when the Ordinary and the Extraordinary are well mingled and tempered together. That in matters of your treasure you did rely upon your Parliament for the Extraordinary; but you were ever desirous to do what you could by improvements, retrenchments, and the like, to set the Ordinary in good frame and establishment. That you are of the same mind in matter of reformation of justice and grievance, to assist yourself with the advice and authority of Parliament at times, but meanwhile to go on with the same intentions by your own regal power and care. That it doth well in church music when the greatest part of the hymn is sung by one voice, and then the quire at times falls in sweetly and solemnly, and that the same harmony sorteth well in monarchy between the King and his Parliament.

That all great reformatiōs are best brought to perfection by a good correspondence between the King and his Parliament, and by well sorting the matters and the times; for in that which the King doth by his ordinary administration and proceedings, neither can the information be so universal, nor the complaint so well encouraged, nor the references many times so free from private affections, as when the King proceedeth by Parliament. On the other side, that the Parliament wanteth time to go through with many things; besides, some things are of that nature, as they are better discerned and resolved by a few than by many.

Again, some things are so merely regal, as it is not fit to transfer them; and many things, whereof it is fit for the King to have the principal honor and thanks.

Therefore that according to these differences and distributions, your Majesty meaneth to go on where the Parliament hath left, and to call for the memorials and inchoations of those things which have passed in both Houses, and to have them pass the file of your Council, and such other assistants as shall be thought fit to be called respectively according to the nature of the business, and to have your learned counsel search precedents what the King hath done for matter of reformation, as the Parliament hath informed themselves by precedents what the Parliament hath done; and thereupon that the clock be set, and resolutions taken; what is to be holpen by commission, what by act of council, what by proclamation, what to be prepared for Parliament, what to be left wholly to Parliament.

That if your Majesty had done this before a Parliament, it might have been thought to be done to prevent a Parliament; whereas now it is to pursue a Parliament; and that by this means many grievances shall be answered by deed and not by word; and your Majesty's care shall be better than any standing committee in this interim between the meetings of Parliament.

For the particulars, your Majesty in your grace and wisdom will consider, how unproper and how unwarranted a thing it is for me, as I now stand, to send for entries of Parliament, or for searches for precedents, whereupon to ground an advice. And besides what I should now say may be thought by your Majesty (how good an opinion soever you have of me), much more by others, to be busy or officious, or relating to my present fortunes.

A declaration was made in the Star Chamber on the day in question, but not by the King in person. The Lord Treasurer was deputed to say what was to be said; and no mention is made of this subject in the only notice of his speech that I have met with.

But though Bacon did not think it becoming, in his present condition, to assume the office of a Privy Counsellor, he would have been very glad to be relieved from that clause in his sentence (otherwise altogether trivial, though very inconvenient to himself) which excluded him from the verge of the Court, and therefore from London and its neighborhood, and for this, or at least for a longer respite, he petitioned the King. The King would have had no objection, I presume, on his own account to remit it altogether; but Dean Williams, who had been selected for the new Lord Keeper, and whose advice was now in high esteem both with him and Buckingham, had a lively apprehension of the danger of offending Parliament, and it was not thought safe to grant any further indulgence so soon; and on the 23d of June Bacon retired to Gorhambury. The three letters which follow represent as much as we know of that negotiation, and of the state of his mind in preparing to meet his new fortune, and try what uses "leisure without honor" might be turned to; for I think Chamberlain's report that he seemed to have "no manner of feeling of his fall" must be rejected, as incompatible with the tone of his correspondence from beginning to end.

## TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — Your Lordship I know, and the King both, mought think me very unworthy of that I have been, or that I am, if I should not by all means desire to be freed from the restraint which debarreth me from approach to his Majesty's person, which I ever so much loved and admired ; and severeth me likewise from all conference with your Lordship, which is my second comfort. Nevertheless, if it be conceived that it may be matter of inconvenience or envy, my particular respects must give place ; only in regard of my present urgent occasions, to take some present order for the debts that press me most, I have petitioned his Majesty to give me leave to stay at London till the last of July, and then I will dispose of my abode according to the sentence. I have sent to the Prince to join with you in it, for though the matter seem small, yet it importeth me much. God prosper you.

Your Lordship's true servant,

FR. ST. ALBAN.

20 June, 1621.

## TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — I humbly thank your Lordship for the grace and favor you did both to the message and messenger, in bringing Mr. Meautys to kiss his Majesty's hands, and to receive his pleasure from himself. My riches in my adversity have been, that I have had a good master, a good friend, and a good servant.

I perceive by Mr. Meautys his Majesty's inclination that I should go first to Gorhambury ; and his Majesty's inclinations have ever been with me instead of directions. Wherefore I purpose, God willing, to go thither forth-

with, humbly thanking his Majesty, nevertheless,<sup>1</sup> that he meant to have put my desire in my petition contained, into a way, if I had insisted upon it; but I will accommodate my present occasions as I may, and leave the times and seasons and ways to his Majesty's grace and choice.

Only I desire his Majesty to bear with me if I have pressed unseasonably. My letters out of the Tower were *de profundis*, and the world is a prison if I may not approach his Majesty, finding in my heart as I do. God preserve and prosper his Majesty and your Lordship.

Your Lordship's faithful and bounden servant,

FR. ST. ALBAN.

22 June, 1621.

TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — I thank God I am come very well to Gorhambury, whereof I thought your Lordship would be glad to hear<sup>2</sup> sometimes; my Lord, I wish myself by you in this stirring world, not for any love to place or business, for that is almost gone with me, but for my love to yourself, which can never cease in

Your Lordship's most obliged friend

and true servant,

FR. ST. ALBAN.

Being now out of use and out of sight, I recommend myself to your Lordship's love and favor, to maintain me in his Majesty's grace and good intention.

<sup>1</sup> The rough draft of this letter, which will be found in the *Gibson Papers*, vol. viii., f. 267, — a draft in Bacon's own hand, indorsed "To Buck. upon bringing Mr. Meautys to kiss the King's hand," — differs little from this so far, but ends as follows: "That he was graciously pleased to have acquainted my Lords with my desire, if it had stood me so much upon. But his Majesty knoweth best the times and seasons, and to his grace I commit and submit myself, desiring his Majesty and your Lordship to take my letters from the Tower as written *de profundis*, and those I continue to write to be *ex aquis salsis*." From which it would seem that the King was willing to refer the petition to the Council, but not to grant it without their sanction.

<sup>2</sup> So in Stephens, but I suspect that the sentence was meant to end at "hear," "sometimes" being the beginning of the next.

The true history of Bacon's remaining years is to be looked for in his books. To them, and to such information regarding them as Mr. Ellis or myself have been able to supply, I must refer those who want to know in what employments the rest of his life was spent. That portion of it which remains to be dealt with here (though it will not be thought ignoble or unworthy by any one who rightly considers what he was, and what he had to do) is for the most part very depressing and melancholy ; for it is the history of a continual struggle to obtain by the help of others the means of pursuing the great purpose for which he now lived, — and generally a losing struggle. That the pecuniary embarrassment into which his sudden fall plunged him, though it was the least part of his affliction, was nevertheless an embarrassment out of which it was necessary to emerge if possible, but by no means easy to find a way, — is a fact not to be overlooked. Neither is it to be forgotten that for such help as he stood in need of, not only his best chance but his most reasonable claim was from the King. His case was in all respects exceptional, and the King was well able to understand and appreciate the difference between him and the ordinary suitors whom he was so apt to oblige. He could appreciate not only the work which he had done, but that which he had yet to do, and which he only desired to be supplied with the means of doing. He knew that for the last fifteen years he had been the most laborious, affectionate, zealous, attentive, faithful, and modest of servants and the most moderately rewarded, — having scarcely ever been a suitor except for some hard-working office for the work of which no one else was so fit, and having received no other bounties. He knew that, however he might have increased his income by accepting gratuities which he ought to have refused, he had amassed no wealth. He knew what kind of work he could do in retirement, and the rare value which



everything that he took in hand was likely to derive from his workmanship. If he could not quite share his faith in the new philosophy and the great things which it promised for mankind, there were other works in other fields of study of which he could well understand the worth and use, and how rarely qualified Bacon was to undertake them. And he knew that for the effectual performance of any work of this kind an unembarrassed income is one of the most indispensable conditions. This was all that was wanted, and it is difficult to believe that the King could not have found means of supplying it, without any risk of putting his Parliaments out of temper. In asking for so much, Bacon was asking him to do no more than all the after ages would have remembered to his honor. And I am inclined to think that he had received direct encouragement to look for it, — if not a distinct promise that he should have it. The rumor mentioned by Sir Anthony Ashley in his letter to Buckingham of the 12th of May,<sup>1</sup> though premature, appears to have had some foundation. Buckingham had not only taken Bacon's part throughout the debates on the impeachment (in which he was probably surprised to find how little power he had), but had refused to concur in the sentence. We learn from Elsing's notes that when it was put to the question whether the punishments set out in the four articles should be inflicted upon the Lord Viscount St. Alban or no, he was the single dissident. And it seems very likely and quite in accordance with all we know of him, that in the freshness of his resentment at his defeat he should not only have determined, but let it be known that he had determined, to mitigate the severity of the sentence another way. Certain it is — at least I collect as much from evidence which seems to me conclusive and which will appear in its place — that Buckingham did at one time of his own accord hold

<sup>1</sup> See above, p. 517, note 1.

out hopes to Bacon not only of a complete pardon and some help for his debts, but also of an annual pension of two thousand — probably three thousand — pounds; and no time seems so likely for such an intimation as immediately after the passing of the sentence.

This would have been enough to furnish him for the life of studious retirement — of “leisure without loitering” — in which he now desired to end his days. It remained for him to justify the promised bounty by showing that it would not be thrown away. With this view he looked round for some fit employment which might serve as earnest of his future course. Had he been in a condition to consult himself alone, he would no doubt have proceeded with the second or third part of the “*Instauratio Magna*,” which still held its place in his own judgment as the work fittest for himself and most profitable for the world, and made that his principal business. But, as things stood, it was necessary to consider also what the world would think; and the world had no such faith in the new philosophy as to take the promise in exchange for pensions. Looking therefore through the list of deficiencies noted in the “*Advancement of Learning*” for some work that could be executed speedily and would be appreciated at once, his thoughts settled chiefly upon two, as especially suitable both for himself and the time: a history of England from the Union of the Roses to the Union of the Kingdoms; and a digest or recompilement of the laws. Both were works which he had long wished to see undertaken, and would probably long ago have undertaken himself, but that he wanted leisure for the one and assistance for the other. For assistance he must still wait upon other people’s pleasure; but leisure, for a time at least, was now at his command. Accordingly he applied himself at once to the history of Henry the Seventh, and for the next three or four months we are to consider that as his real occupation, and the few letters which fol-

low, and which I may leave to tell their own story, as the smaller cares and vexations which interrupted it.

TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — I thought it my duty to take knowledge to his Majesty from your Lordship by the inclosed, that, much to my comfort, I understand his Majesty doth not forget me nor forsake me, but hath a gracious inclination to me, and taketh care of me ; and to thank his Majesty for the same. I perceive by some speech that passed between your Lordship and Mr. Meautys, that some wretched detractor hath told you that it were strange I should be in debt ; for that I could not but have received an hundred thousand pounds gifts since I had the seal ; which is an abominable falsehood. Such tales as these made St. James say that the tongue is a fire, and itself fired from hell, whither when these tongues shall return, they will beg a drop of cold water to cool them. I praise God for it, I never took penny for any benefice or ecclesiastical living, I never took penny for releasing anything I stopped at the seal, I never took penny for any commission or things of that nature, I never shared with any servant for any second or inferior profit. My offenses I have myself recorded ; wherein I studied, as a good confessant, guiltiness and not excuse ; and therefore I hope it leaves me fair to the King's grace, and will turn many men's hearts to me. As for my debts, I showed them your Lordship, when you saw the little house and the gallery,<sup>1</sup> besides a little wood or desert, which you saw not. If these things were not true (although the joys of the penitent be sometimes more than the joys of the innocent) I could not be as I am.

God bless you, and reward you for your constant love to me.

I rest, etc.,

<sup>1</sup> Verulam House, I suppose.

## TO THE KING.

IT MAY PLEASE YOUR MOST EXCELLENT MAJESTY, — I perceive by my noble and constant friend the Marquis, that your Majesty hath a gracious inclination towards me, and taketh care of me, for fifteen years the subject of your favor, now of your compassion ; for which I most humbly thank your Majesty. This same *Nova Creatura* is the work of God's pardon and the King's ; and since I have the inward seal of the one, I hope well of the other.

*Utar*, saith Seneca to his Master, *magnis exemplis ; nec meæ fortunæ, sed tuæ*. Demosthenes was banished for bribery of the highest nature, yet was recalled with honor. Marcus Livius was condemned for exactions, yet afterwards made Consul and Censor. Seneca banished for divers corruptions ; yet was afterwards restored, and an instrument of that memorable *Quinquennium Neronis*. Many more. This, if it please your Majesty, I do not say for appetite of employment, but for hope that if I do by myself as is fit, your Majesty will never suffer me to die in want or dishonor. I do now feed myself upon remembrance, how when your Majesty used to go a progress, what loving and confident charges you were wont to give me touching your business. For as Aristotle saith, young men may be happy by hope, so why should not old men, and sequestered men, by remembrance ? God ever prosper and preserve your Majesty.

Your Majesty's most bounden and devoted Servant,

FR. ST. ALBAN.

16 July, 1621.

## TO THE MARQUIS OF BUCKINGHAM.

MY VERY GOOD LORD, — I have written, as I thought it decent for me to do, to his Majesty the letter I send inclosed. I have great faith that your Lordship now nobly and like yourself will effect with his Majesty. In

this the King is of himself, and it hath no relation to Parliament. I have written also, as your Lordship advised me [to the Prince],<sup>1</sup> only touching that point of means. I have lived hitherto upon the scraps of my former fortunes; and I shall not be able to hold out longer; therefore I hope your Lordship will now, according to your loving promises and hopes given, settle my poor fortunes, or rather my being. I am much fallen in love with a private life; but yet I shall so spend my time, as shall not decay my abilities for use.

God preserve and prosper your Lordship.

TO THE KING.

IT MAY PLEASE YOUR MAJESTY, — Now that your Majesty hath passed the recreations of your progress, there is nevertheless one kind of recreation, which (I know) remaineth with your Majesty all the year, which is, to do good, and to exercise your clemency and beneficence. I shall never measure my poor services by the merit, which perhaps is small; but by the acceptation, which hath been always (favorably) great. I have served your Majesty now seventeen years; and since my first service (which was in the commission of the Union), I received from your Majesty never chiding or rebuke; but always sweetness and thanks. Neither was I in these seventeen years ever chargeable to your Majesty, but got my means in an honorable sweat of my labor, save that of late your Majesty was graciously pleased to bestow upon me the pension of twelve hundred pounds, for a few years; for in that other poor prop of my estate, which is the farm of the petty writs, I improved your Majesty's revenue by four hundred pounds the year. And likewise, when I received the seal, I left both the Attorney's place, which was a gainful place, and the Clerkship of the Star

<sup>1</sup> I have supplied the words within brackets, which have evidently been omitted by a slip of the pen.

Chamber which was Queen Elizabeth's favor, and was worth twelve hundred pounds by the year, which would have been a good commendam. The honors which your Majesty hath done me have put me above the means to get my living ; and the misery I am fallen into hath put me below the means to subsist as I am. I hope my courses shall be such, for this little end of my thread which remaineth, as your Majesty in doing me good may do good to many, both that live now, and that shall be born hereafter. I have been the keeper of your seal, and now am your beadsman. Let your own royal heart and my noble friend speak the rest.

God preserve and prosper your Majesty,

Your Majesty's faithful

poor servant and beadsman,

FR. ST. ALBAN.

5 September, 1621.

TO THE PRINCE.

MAY IT PLEASE YOUR HIGHNESS, — I cannot too oft acknowledge your Highness's favor in my troubles, but acknowledgment now is but begging of new favor ; yet even that is not inconvenient ; for thanksgiving and petition go well together, even to God himself ; my humble suit to your Highness is that I may be thought on for means to subsist ; and to that purpose, that your Highness will join with my noble friend to the King. That done, I shall ever be ready, either at God's call or his Majesty's, and as happy, to my thinking, as a man can be, that must leave to serve such a King.

God preserve and prosper your Highness.

On the 13th of September Bacon obtained leave to go to London for six weeks, and also to stay — for a time not specified in the warrant — at Sir John Vaughan's house at Parson's Green, the clause of his sentence notwith-

standing which forbade him to come within the verge of the Court. The ground alleged for the grant of this indulgence was his need of conference with creditors and consultation with physicians. But he probably had another motive for desiring it at that time, which the patriots of the day could not have understood so well. Prohibition to come within "the Verge" included a prohibition to come within Sir Robert Cotton's library, where materials for the history of Henry the Seventh most abounded; not to mention the other collections of original records, which all lay within the forbidden circle. The need of access to these would have been a sufficient ground for desiring a suspension of the prohibition at this time; but it would hardly perhaps have been appreciated by Parliaments and politicians: and as I suppose he drew the warrant for the King's signature himself, he thought it more prudent to rest upon the more ordinary requirements of health and business. But this warrant of the 13th was followed on the 20th by another of more importance: important enough, as it proved, to alarm the new Lord Keeper and produce a remonstrance and delay. A fine to the Crown gave the Crown a first claim upon a man's goods. Until all was paid, the Crown could forbid any other claimant to interfere with them. The King consented to make an assignment to persons nominated by Bacon himself, of the fine imposed by Parliament; thus not only forbearing to exact it, but making it serve as a protection to him against his other creditors. He consented at the same time to grant him such a general pardon as was usually granted at coronations or such times, — a discharge in effect from all liabilities for offenses past; subject to particular exceptions; the exception in this case being the important one of the Parliamentary sentence.

So far, Bacon's prospects seemed to be improving; and inasmuch as they depended on himself — upon the worthy

and diligent execution of the task which he had undertaken — more could not have been desired of him. I had occasion in a previous chapter to compare Chamberlain's report of what was "the general opinion" of Bacon's qualifications for the Chancellorship when he first became Lord Keeper — namely, that he had "so tender a constitution both of body and mind that he would hardly be able to undergo the burden of so much business as his place required" — with the result of his first half-year's administration; which was the clearing off for the first time within living memory of all arrears.<sup>1</sup> We now have an opportunity of comparing his report of the state of mind in which Bacon retired to Gorhambury at Midsummer, with the result of his work there during the next three months. On the 23d of June he is reported (and I do not doubt that it was a correct report of the "general opinion") to have left Parson's Green for Gorhambury, "having (as should seem) no manner of feeling of his fall, but continuing as vain and idle in all his humors as when he was at highest." On the 8th of October, he was ready to send a fair manuscript of his "History of Henry the Seventh" to the King: a work which, done under every advantage, would have been a rare specimen of skill, diligence, and spirit in the workman; but for which, begun as it was immediately after so tremendous an overthrow, and carried on in the middle of so many difficulties in the present and anxieties for the future, it would be hard to find a parallel. Though not one of his works which stand highest either in reputation or popularity with later times, — being neither generally read (an accident which it shares with most of the others) nor generally supposed to be of great value (in which it is more singular), — it has done its work more effectually perhaps than any of them. None of the histories which had been written before conveyed any

<sup>1</sup> See above, pp. 212–221.



idea either of the distinctive character of the man or the real business of his reign. Every history which has been written since has derived all its light from this, and followed its guidance in every question of importance; and the additional materials which come to light from time to time, and enable us to make many corrections in the history of the events, only serve to confirm and illustrate the truth of its interpretation of them. I can speak on this point with some confidence, for in editing it (now more than twenty years ago) I took great pains both to examine the authorities and point out the errors; and always found that the correction of the story brought it into better accordance with Henry's character as Bacon drew it, and his policy as he interpreted it. And if M. Bergenroth's calendar of Spanish state papers had been then published, I should have had a good deal more to do in the same way, and with the same result.<sup>1</sup> Situated as he was, and excluded from access to all the original records, it could not be a work of research. He had to take the facts from Polydore Vergil and the old chroniclers who followed him with unsuspecting faith, — correcting nothing and adding very little, — almost as he found them; and to discover their meaning by his own inner light. But as a study of character in action and a specimen of the art of historical narrative, it comes nearer to the merit of Thucydides than any English history that I know. It was not published till the following year, but the manuscript was finished before the 8th of October.

It might be thought that a work of this order, being the fruit of a single long vacation, would have been held to justify the writer in asking for means to pursue that calling in comfort: so much comfort, at least, as was

<sup>1</sup> See a paper in *Fraser's Magazine* for May, 1863: in which I have attempted to give a full history of the negotiation between England and Spain for the marriage of Prince Arthur and the Infanta Katherine; a history full of new illustrations of the character of both the Kings.

necessary to enable him to pursue it with effect and advantage. But his evil fate had not yet done with him. He had just lost a good friend at the Treasury and got a bad one in exchange. On the 28th of September Mandeville gave up the Lord Treasurer's staff and was made President of the Council. "I cannot learn any cause of his displacing," says Chamberlain, 13th October, "though some talk of corruption, others of unfitness; but the likeliest is to make room for the Lord Cranfield now in place, whom the King in his piercing judgment finds best able to do him service." Whatever service he might do the King, ill-service was the best that Bacon could expect from him. What was the cause, I do not know, — probably some collisions of opinion when they were on the Treasury Commission together, — but Cranfield had long shown an unfriendly feeling and acted an unfriendly part towards Bacon, and being a man of great ability in his way, and now in so great a place, was sure to do him mischief. The choice of his own successor also was no very fortunate one for him. But the worst was, that he had the misfortune about this time to give a personal offense, without the least intending or even knowing of it, to Buckingham himself: whom, though the matter was a very small one, it put into a humor which must have reminded Bacon in a lively but unpleasant way of the summer of 1617, when he fell out with him for thinking that the proposed marriage between his brother and Coke's daughter would be impolitic and inconvenient. In this case, as in that, it was a private and domestic difference, — and it must be said for Buckingham that he never (so far as I know) made a personal quarrel of any disagreement between them upon questions of public policy or administration, though such disagreements did once or twice occur, — but it was a trial which his temper would not bear. He had a fancy to buy York House; and it is not unlikely, considering Bacon's present

condition and prospects, that in offering to treat for it, he thought he was doing him a kindness and a courtesy. Bacon unfortunately saw it in a different light. Having received hopes from Buckingham himself of a provision which would enable him to live like a gentleman, and knowing how destructive of respect among men all outward signs of poverty are in those who have been better off, he had not thought that he would be willing to see him turned out of his house; and it may be suspected (for we have no record of the first interchange of communications) that his answer expressed something more than unwillingness. However it came about, the effect was a long fit of sullen displeasure; during which Buckingham would give him no effectual help in his occasions, though they were at once pressing and reasonable. The assignation of his fine (for which the warrant had been signed on the 20th of September) was already passed, and this was an important relief: but his license to remain in London had only a fortnight to run; and a warrant for the drawing up of a general pardon (with exception of the Parliamentary sentence) which had been granted at the same time but suspended by his own desire (as I understand the story) that the form might be altered, when it came in its amended shape before the new Lord Keeper met with a check.

Williams, having taught Buckingham how to escape the hunt after the monopolists by joining the hunters, and having been rewarded for the service by the wool-sack, was now in possession of his ear, and continued to work upon the one idea which had served him so well. Parliament was to meet again in November, and the one thing to be cared for was that nothing should be done which Parliament could take amiss. He warned him, therefore, to "meddle with no pardon for the Viscount St. Alban's" till he had spoken with him: and there is some reason to suspect that Williams's scruple was overcome

at last by a direct order from the King, without Buckingham's interference : who certainly remained in the sullens for some months after, determined, apparently, to make Bacon repent of having crossed his humor : an object which, when he had seen the house which had been refused to himself parted with to Cranfield, the last man perhaps whom Bacon desired to oblige, he probably thought he had accomplished. "I know what way the hare runs, and that my Lord Marquis longs until Cranfield hath it; and so I wish too, for your good; yet would not that it were absolutely past until my Lord Marquis did send or write unto you to let him have it; for then his so disposing of it were but the next degree removed from the immediate acceptance of it; and your Lordship freed from doing it otherwise than to please him, and to comply with his own will and way." So wrote Sir Edward Sackville on the 11th of March, 1621-1622. On the 20th we find Bacon thanking Buckingham for having procured him his liberty; that is, for having got the King's signature to the warrant licensing him to come within the Verge,—the clause in the Parliamentary sentence notwithstanding: and the author of the "Advancement of Learning," the "Novum Organum," and the "History of Henry VII.," was thenceforth at liberty to pursue his studies with all the advantages which the ruin of his fortune had left within his reach.

While the negotiation was going on by which this result was brought about at last, the "History of Henry VII.," the manuscript of which was sent to the King shortly after the 8th of October and returned shortly after the 7th of January, had gone through the press, and was now ready for delivery; when one of those smaller vexations with which fortune loves to persecute those who have lost her favor crossed him in a manner quite unexpected and still inexplicable. The Bishop of

London, Dr. George Mountain, interposed a "stay." Whether he had been consulting with the Lord Keeper (who had just succeeded him in his late Bishopric) and been told that the Houses of Parliament would think themselves mocked and derided if a man whom they had judged unworthy to be a constable were allowed to publish a book, — or whether he thought that a man who might not come within the Verge ought not to print within the Verge, — or whether he feared that literature itself would be disgraced if convicts were permitted to become authors, — or what else was the nature of his objection, we are left to guess: for it cannot have been anything that he found in the book itself, and all we know is that Bacon heard from Meautys on the 21st of March that the publication of the book had been arrested by some "demur" on the part of the Bishop of London. But whatever it was, it appears to have been speedily overruled, for we hear no more of it, and we know that the book was out before the end of the month, and might be bought in the shops for six shillings.

While the manuscript remained with the King, and Bacon waited for the effect (which was not much, so far), he turned his own attention to his philosophy, — selecting for his next task that part which was furthest advanced, — the completion and translation into Latin of the argument of the "Advancement of Learning," which he had now resolved to make serve for the first part of the "Instauratio Magna." This was already so far advanced that he expected it to be finished by the end of the summer. If the "History of Henry VII." took two months and a half to go through the press, the "De Augmentis Scientiarum," being in Latin and about twice the size, would not be likely to take less than six; even if the manuscript were as complete and fair, and the printing were pressed on as fast. And therefore though it was not out before October, 1623, we need not doubt

that the composition was the work mainly of the winter of 1621 and the following spring and summer.

But it was important for Bacon, as his affairs and prospects now stood, to keep the King in mind of him by labors in which he had a more direct interest. He had given a fair specimen of the service he was capable of as a historian, and he wished to show what use might still be made of him as a lawyer. Now the recompilement of the Laws was a work of which he had long since and repeatedly pointed out the value, and offered his help in. It was a work which he was particularly well suited to superintend, if he might have the requisite authority and assistance. And there was no occasion more suitable for a renewal of the proposal than the presentation of a copy of the "History of Henry VII." He enclosed, therefore, in the following letter, "an offer to the King of a Digest to be made of the Laws of England":—

MAY IT PLEASE YOUR MAJESTY,—I acknowledge myself in all humbleness infinitely bounden to your Majesty's grace and goodness, for that at the intercession of my noble and constant friend my Lord Marquis, your Majesty hath been pleased to grant me that which the civilians say is *Res Inæstimabilis*, my liberty; so that now, whenever God calleth me, I shall not die a prisoner. Nay, further, your Majesty hath vouchsafed to cast a second and iterate aspect of your eye of compassion upon me in referring the consideration of my broken estate to my good Lord the Lord Treasurer; which as it is a singular bounty in your Majesty, so I have yet so much left of a late commissioner of your treasure, as I would be sorry to sue for anything that mought seem immodest.

These your Majesty's great benefits in casting your bread upon the waters (as the Scripture saith) because my thanks cannot any ways be sufficient to attain, I have

raised your progenitor of famous memory (and now I hope of more famous memory than before), King Henry the 7th, to give your Majesty thanks for me; which work, most humbly kissing your Majesty's hands, I do present. And because in the beginning of my trouble, when in the midst of the tempest I had a kenning of the harbor which I hope now by your Majesty's favor I am entering into, I made a tender to your Majesty of two works, "An history of England" and "A digest of your laws;" as I have (by a figure of *pars pro toto*) performed the one, so I have herewith sent your Majesty, by way of an epistle, a new offer of the other. But my desire is further, if it stand with your Majesty's good pleasure, since now my study is my exchange and my pen my factor for the use of my talent, that your Majesty (who is a great master in these things) would be pleased to appoint me some task to write, and that I shall take for an oracle.

And because my "Instauration" (which I esteem my great work, and do still go on with in silence) was dedicated to your Majesty; and this History of King Henry the 7th to your lively and excellent image the Prince; if now your Majesty will be pleased to give me a theme to dedicate to my Lord of Buckingham, whom I have so much reason to honor, I should with more alacrity embrace your Majesty's directions than mine own choice. Your Majesty will pardon me for troubling you thus long. God evermore preserve and prosper you.

Your Majesty's poor beadsman most devoted,

FR. ST. ALBAN.

GORHAMB., 20 Mar., 1621.

There was also another work which he appears to have begun about this time, and to have designed for a work of considerable extent and importance, though he did not carry it much beyond the opening. His object at

this crisis was to be furnished with "peace and leisure" for a life of literary industry. The conditions necessary for the enjoyment of such a life were the payment of his debts and relief from anxieties about means to live. The condition necessary to entitle him to such relief was the offer of useful and acceptable service in that line of life. He had already shown what service he could do as the historian of his country. He had indicated the use that might still be made of his legal experience and cultivation. He had yet to show what use might be made of him as a politician, — though of the study only and not of the council. In a note of what he meant to say to the King at an interview which he expected to have with him in March, — he had set down among the subjects for his pen, — "if contemplative," — "the Holy War." And it may be asked what Holy War he alluded to.

It was a political speculation closely connected with the great problem of English politics at that time, — how to avert the danger with which the constitution was threatened from the dependence of the Crown upon the Commons for supplies which the affairs of the country needed, — from the fact that the Commons had, and knew that they had, the means of placing the government in such difficulties for want of money, that if they had courage and resolution to face the immediate consequences, they could ultimately compel the government to accept it upon their own terms. The danger was beginning to be felt in Elizabeth's times, but it was kept under by the general sense of the perils by which England and Protestantism were still surrounded, and by a general feeling that the safety of the nation depended upon the action of her government. While a Spanish armada was possible, it was impossible for English patriots to join in any attempt to weaken and embarrass the executive. Throughout James's reign, on the contrary, there was a



general feeling of security at home: and though there were many who were eager to be at liberty to attack and plunder Spain, no one was afraid of anything that Spain could do in return against England. In the eyes of the patriots, the King's embarrassments were his own business, and were no hindrance to theirs, but rather a help; their business being to assert and enforce what they called their rights; but what were in fact pretensions to a position in the constitution which they had not as yet enjoyed. Bacon—to whom, though he has been sometimes represented as quite blind to what was coming, this state of things had long been a matter of the gravest anxiety—had come to the conclusion that the best, if not the only, chance of healing the growing breach was to engage the country in some popular quarrel abroad: and I have little doubt that if his advice had been asked he would have recommended a steady opposition to Spain in the interests of Protestantism, and if it led to a war would have thought it all the more fortunate. But when in March, 1617, the King's declaration of the past history and present state of the negotiations for the Spanish match satisfied him that this policy was for the time out of the question, he turned to consider in what ways an alliance between England and Spain (since alliance it was to be) might be employed for the benefit of the world. For the differences between Catholics and Protestants, the best effect that could be hoped for was a greater disposition towards mutual toleration, so far as it depended upon the action of the two governments. But there were many things important to Christendom in which Protestants and Catholics had a common interest. The pirates of Algiers had no preference for Protestant prizes over Catholic, or Catholic over Protestant. And the Ottoman was the common enemy of both—an enemy bound by principle, religion, and tradition, to propagate his faith by the sword: still professing arms as his princi-

pal occupation ; and though declining, still thought dangerous.<sup>1</sup> It might be, he thought (among other things of more immediate concern), “a beginning and seed (for the like actions before had had less beginnings) of a holy war against the Turk, whereunto it seemed the events of time did invite Christian kings, in respect of the great corruption and relaxation of discipline of war in that empire ; and much more in respect of the utter ruin and enervation of the Grand Signor’s navy and forces by sea ; which opened a way (without congregating vast armies by land) to suffocate and starve Constantinople, and thereby to put those provinces into mutiny and insurrection.”

This was a matter for the negotiators to talk about in the intervals of their business, — as a thing which might come under serious consideration if the alliance should prosper. For some years this did not seem very likely. The fresh demands, interruptions, and delays which the Spanish Government was continually interposing, and the complications which grew out of the Bohemian revolution, had been raising the hopes of those who wished it to fail and the fears of those who wished it to succeed, till during full twelve months — from the autumn of 1620 till the autumn of 1621 — everybody expected that the treaty would be broken off by a war. But the circumstances under which Parliament was dissolved in the beginning of 1622 altered the prospect. The last act of the House of Commons before their adjournment at the beginning of June, had been to promise that if the King failed to obtain by peaceable means the settlement of true Religion and the recovery of the Palatinate, he

<sup>1</sup> “The Turks, a band of Sarmatian Scithes . . . out of which after much variety of fortune, sprung the Othoman family, *now the terror of the world.*” Speech on General Naturalization, February, 1606-7.

“The Turks have it” [the profession of arms, etc.] “at this day, though in great declination.”—*Essay on the Greatness of Kingdoms and Estates.* 1625. Works.

should command for those services the lives and estates of all their constituents. In November the failure was declared, and it was time to call upon them to make their promise good. Parliament was immediately summoned, and met on the 20th of November. The state of the case was explained to the two Houses by Digby, the King being unable to attend in person; who laid all the blame upon the Emperor, — excusing the King of Spain and saying nothing about Frederick, — and ended with an intimation that the force which the occasion required would cost not less than £900,000. This was not beyond the estimate which had been made by the Council of War in January, and was therefore within their engagement. But though it had been easy to agree in the promise without naming scruples or stipulations, it was found when it came to the performance that such a grant could not be agreed to except upon conditions. They voted a single subsidy, — enough to maintain the garrisons in the Palatinate through the winter, — but coupled it with a petition setting forth their own view of what should be done: which being in direct opposition to the course to which the government had committed itself, brought up the old dispute between Prerogative and Privilege in the most inconvenient and intractable of all its shapes, — the dispute, in its very nature incapable of solution otherwise than by main force, on the question of abstract constitutional right; and the issue was a dissolution without the royal assent given to any act (except the act of subsidy in the middle of the previous session), and a proclamation which called that meeting of Parliament not a session but a convention. Upon this the Spaniards, ready to do whatever was necessary to keep James on their side and detach him from the Protestant cause in the European quarrel, professed the strongest wish for the alliance, promised everything that was likely to encourage him to proceed with it, and made Digby believe that

they intended performance. It was only by the absolute authority of the two Kings, he said, that the business could be brought to any good conclusion; the Spanish Council of State had decided, after a full discussion of the question of the Palatinate, that complete satisfaction should be given to the King of England: and he "made no doubt but that the Prince should entirely be restored both to his territories and his electorate: and the King of Spain, merely to gratify his Majesty, would make it his work."

Whether wisely or unwisely, therefore, the relations between England and Spain had been brought back to much the same condition in which they were in the spring of 1617, when Bacon suggested the additional instructions to Digby: and if any use could be made of the conjunction of the two Kings in making Christendom safe against Ottoman aggression, it seemed to be a fit time for taking the subject into consideration. To prepare the way, Bacon proposed to enter into a thorough discussion of the question in all its bearings, by means of an imaginary debate in which all opinions were to be represented. The speakers were to be a moderate divine, a Protestant zealot, a Roman Catholic zealot, a soldier, a statesman, and a courtier. The first point—"whether a war for the propagation of the Christian faith, without other cause of hostility, be lawful or no, and in what cases"—was assigned to the Roman Catholic zealot. The second—whether, supposing it to be lawful, it was not also "obligatory to the Christian princes and states to design it"—was to be argued by the Protestant zealot. The third—whether allowing it to be in the absence of other engagements binding as well as lawful, "there were not other things to be preferred before it"—was to be handled by the moderate divine. The courtier was to contend that the idea was altogether vain and visionary, and the thing not to be seriously thought of.

The statesman was to answer him, and show the general grounds for believing the enterprise practicable. And the soldier was to explain the particular means and preparations.

If it had been finished according to the design, and in a style and spirit answerable to the beginning, it would have been a very interesting record of the state of opinion then prevailing as to the duty of fighting for the faith, and a fine specimen of the discussion of a state-question by statesmen of different views. But it was carried no further than the opening speech, representing the opinion of the Roman Catholic zealot, which cannot be taken as representing Bacon's own, and remained as an unfinished piece in manuscript till after his death; when it was printed by Rawley among the "Miscellany Works." He had thought well enough, however, of what was done, to have it not only preserved but translated into Latin; and therefore its proper place in this edition is among the Literary Works, where it will be found (Part III., pp. 5-48), with a preface containing what else I had to say about it.

The "De Augmentis Scientiarum" being now in the hands of the translators or the printers, Bacon had to consider to what part of the "Instauratio" he should next apply himself. He had a wide field for choice. The "Instauratio" was designed in six parts. The first, which was to exhibit the *partitiones scientiarum*, he had already determined to leave to be represented by the enlarged edition of the second book of the "Advancement of Learning" — now expanded into the eight last books of the "De Augmentis." Of the second part, which was to exhibit the art itself of interpretation — the "Novum Organum, sive indicia vera de Interpretatione Naturæ" — but a small part was completed. He had left off at the end of the second book, with an announcement that he had yet to treat of the "supports and rectifications of In-

duction," and then of "Concretes," and "Latent Processes," and "Latent Configurations," and the rest, "as set forth in order in the twenty-first aphorism." These were all necessary to complete the description of the new logical machinery by which the meaning of nature was to be deciphered — to show how defects were to be supplied, and errors rectified; how the mode of inquiry was to be adapted to the nature of the subject; what "natures" were to have precedence in the order of inquiry, and how it was to be ascertained when the inquiry might safely terminate, as having left no "nature" in the universe unchallenged. After which were to come the "application to practice;" the "preparations for investigation;" and the "ascending and descending scale of axioms." All these were still to be supplied. But though he seems to have been satisfied that he himself saw the way through it all, and it was very unlikely that anybody else would ever do it, this was not the task which he undertook next. Important as he conceived the completion of the logical machinery to be, it seemed still more important to set measures on foot for providing the materials upon which it was to work. Without the natural and experimental history the most perfect method of reasoning would be of no use. His avowed motive for publishing the "Novum Organum" in an imperfect shape was to obtain help for this part of the work, and he probably expected that the publication would draw many fellow-laborers to his aid, and leave him comparatively free to pursue that part which was more peculiarly his own. But when none appeared, he thought the best thing he could do was to set the example himself. "I have heard his Lordship speak complainingly," says Rawley, "that his Lordship (who thinketh he deserveth to be an architect in this building) should be forced to be a workman and a laborer, and to dig the clay and burn the brick; and more than that (according to the hard con-

dition of the Israelites at the latter end) to gather the straw and stubble over all the fields to burn the bricks withal." But he knew that except he did it nothing would be done, and he now made a kind of vow that no month should pass without showing one or more portions of this Natural History completed and published.

A more virtuous resolution was probably never registered, nor with a sincerer desire, followed by a more vigorous effort, to fulfill it. Nor perhaps was so virtuous a resolution ever so much to be regretted. For the labor which he bestowed upon these histories, while it absorbed month after month of a literary power and activity which were never in finer order, appears to have had no effect whatever in advancing the work. It was not possible that any such collections could be made by his own labor complete enough to serve the purpose for which he designed them. They did not even serve the purpose of inciting anybody else to take up the task in the same spirit with the same intention. They retain a high literary value (for the workmanship is excellent throughout, and the general reflections and addresses to the reader are full of weighty thought and passionate eloquence); a considerable historical value, as a record of the condition in which the knowledge of nature then was; and a very great biographical value, as proving that his faith in the principles of his philosophy remained unshaken and his ardor unabated, and that he was pursuing it to the end in the spirit of a man to whose care the secret of the fortunes of humanity had been entrusted: *Res enim humani generis agitur: non nostra*. But I suppose that if they had all perished together and never been heard of, the progress of mankind in the interpretation of nature would have been unaffected by the accident. And when I consider what might have been the fruits of the same time and industry spent on subjects of history, morals, politics, and law, I cannot but feel that the *res*

*humani generis* did in fact lose by his devotion a good deal more than it gained.

Meantime *res nostra* was in worse plight than ever. His ways and means for the prosecution of these studies (which could not repay their own cost) were growing scantier every day. Nothing had come of the reference to Cranfield. He had not been admitted to an interview with the King. His pension was £800 in arrear. And his farm of Petty Writs was sequestered. Not finding any opportunity for saying to the King what he wanted to say, he now thought of turning it into a letter. But he had not spoken with him for a year and a half; and he knew by experience that letters on tender subjects during long absences were dangerous, even when relations were not otherwise changed. The letter which he wrote on this occasion is well known. It was printed in the "Cabala," in the "Baconiana," and in Sir Toby Matthew's collection; it is to be seen in all editions of the collected works; and it is natural to suppose that it was delivered according to the address. This, however, is not the fact. We have good evidence, though it has been hitherto overlooked, that though written it was never sent. Among the papers at Lambeth there are two manuscripts of it; the rough draft, and the fair copy,—both in Bacon's own hand; and the fair copy has the following indorsement, "A copy of yo<sup>r</sup> Lopp lre. to y<sup>e</sup> K. unsent." Though this is written in a hand comparatively modern, the words "your Lordship" show that it was copied from a docket by one of Bacon's own men; and the fact is confirmed by an entry in Robert Stephens's catalogue, of a letter addressed to the King—without date—beginning with the same words, and described as "complaining of his wants—unsent." If Stephens's catalogue be, as I have always supposed, a copy of one made by Tenison in the winter of 1682, when he first received the papers, we may conclude from this



that the letter in question bore this indorsement when it came to his hands.

That Bacon, when he read over what he had written determined not to send it, is intelligible enough, if we consider the doubt which now hung over his relations with the King. His own feeling of affectionate loyalty had suffered no change. But whether the King still felt as he used to do towards him, he had small means of judging.

His bounties, even those which cost no money, had not flowed very freely as yet. Neither the History nor the offer of the Digest of Laws had met with any such response as they invited. It was difficult not to suspect that since the days when Buckingham spoke so confidently of pardons and pensions some change had come over the King's mind. And the thing was only too likely. The same disposition which had led him to take a favorable and compassionate view of Bacon's case while the remembrance of the man and his service was fresh, would lead him now to take impressions from the counsellors by whom he had been since surrounded; especially those through whom he had to act, — Cranfield and Williams; both men on whom he now relied for advice, and both ill-disposed towards Bacon, and incapable of valuing or understanding him. He, it is true, knew him better, and could never have been made to take their coarse and vulgar view of his character and purposes. But he might be deterred from taking active measures in his behalf. Action through unwilling agents was always a difficulty with him. To postpone or put by what was troublesome or disagreeable was his familiar sin; and Buckingham, who could rouse him when he pleased, was himself suffering under the influence of the same counsellors, and his friendship, though formally renewed, had lost its zeal and activity. Upon the whole, Bacon may well have doubted whether in appealing to the King's

regard and affection, he was not assuming too much, and judged it better manners to make his approach in a more formal and distant way. Having, therefore, a definite complaint to make and a definite favor to ask, he decided to throw them into the form of a regular petition, which he accordingly drew up ; and the draught remaining among his papers will be easily recognized as an amended edition of the letter for which it was substituted.

TO THE KING'S MOST EXCELLENT MAJESTY.

*The humble Petition of the Lord Verulam, Viscount St. Alban.*

That whereas your supplicant, for reward of full sixteen years' service in the painfulest places of your kingdom (how acceptable or useful, he appealeth to your Majesty's gracious remembrance), had of your Majesty's grace and bounty two grants, both under the great seal of England, the one a pension of £1,200, the other a farm of the petty writs, about £600 per annum in value, which was long since assigned to your supplicant's wife's friends in trust for her maintenance ; which two grants are now the substance of your supplicant's and his wife's means, and the remain of your Majesty's former favors, except his dignities, which without means are but burdens to his fortunes : —

So it is (most gracious Sovereign), that both these are now taken from him. The pension stopped, the lease seized. The pension being at this present an arrear of £500 and at Michaelmas £800 is stopped as he conceiveth upon the general stop of pensions ; though he hopeth assuredly that your Majesty, that looketh with the gracious eye of a king and not the strict eye of an officer, will behold his case as special, if not singular. The latter was first seized for satisfaction of a private gentleman, your supplicant unheard, and without any shadow of a legal course ; since it hath been continued, in respect of a debt to your Majesty for the arrear of

rent upon the same farm, amounting to £1,500. But whereas your Majesty's farmers debtors for their rents, and other your debtors, have usually favors, sometimes of stallment, sometimes upon equity, if their farms decay; or at least they are called upon; have days given; put in security, or the like; and seizure or sequestration is the last extremity; your supplicant was never so much as sent to, no warning to provide, no days given, but put [out] of possession suddenly by a private and peremptory warrant, without any spark of those favors used to the meanest subjects. So that now your supplicant having left little or no annual [income] is in great extremity, having spread the remnants of his former fortunes in jewels and plate and the like upon his poor creditors scarce leaving bread to himself and his family.

In tender consideration whereof, your supplicant and overthrown servant doth implore your Majesty's grace and goodness felt by so many, known to all, and whereof he cannot live to despair, first, in general, that your Majesty will not suffer him upon whose arm your princely arm hath so often been when you presided in counsel (so near he was), and who hath borne your image in metal but more in his heart, utterly to perish, or, which is worse, to live in his last days in an abject and sordid condition. Next, in particular, that your Majesty would be graciously pleased to take present order to have the arrear of his pension paid, and likewise that for the future it may be settled, that he be not at courtesy, nor to beg at that door which is like enough to be shut against him. Secondly, that the possession of his wife's lease may be restored unto her; and this bit of arrear to your Majesty, that you will be pleased to remit it, according to your Majesty's gracious and pious promise, when you admitted him to you in the height of his troubles, which was, that you would not meddle with his estate but to mend it. In the restoring the possession,

you shall remove your hand of seizure : in the remitting of the rent, you shall extend your hand of grace : and if he be not worthy of so much favor as to have it released, yet that it may be respited for some good time, that he may in the meanwhile make somewhat of that his father left him, and keep himself out of want, in such sort that your supplicant that aspireth but to live to study be not put to study to live. And he, according to his bounden duty, shall not intermit, as ever he hath done, to pray to God for your Majesty's health and happiness.

Upon a comparison of this with the unsent letter, I find reason to think it was drawn up before Michaelmas, 1622. But it seems probable that Bacon kept it back until he could get it presented by Buckingham, who in his present temper required careful approaching ; but after a personal interview (which Bacon appears to have succeeded in obtaining with him early in November) renewed his active friendship, recommended his petition to the King, moved the King to admit him to kiss his hand, and appeared altogether like himself again. The immediate result was the following warrant :—

COPY OF THE KING'S WARRANT TOUCHING THE LORD  
ST. ALBAN'S DEBTS.

JAMES REX,— We do much commiserate the estate of our right trusty and well-beloved the Lord of St. Alban, having served us in so great place, and being one whom, howsoever he offended in judicature, yet in matter of counsel and our commission of treasure we found faithful and very careful and diligent, running courses entire and direct for the good of our service. Being therefore informed from him that he is indebted, and that some of his servants likewise and near friends are engaged for him, of whom he hath no less care than of himself (which mind we commend in him), we do wish

the times were such as we might free him at once by our liberality. But the times being as they are, as we have gracious intentions towards him, so in the mean time we have care of his subsisting and honor and quiet. And therefore we do require you and every of you from time to time to treat with such creditors of his as he shall desire to make some reasonable and favorable composition for him and his sureties, letting them know that what favor and ease they shall do him in the composition shall be acceptable to ourselves: for which purpose we shall vouchsafe to take knowledge from you of such as shall be forward to perform our desire. And our will and pleasure is generally that by all good means you bring them to good terms of composition with him; which he shall take at your hands for service done unto ourselves.

Given at our Court of Newmarket this 14th of November, 1622.

These, as I have observed before, were only the irritations and interruptions of Bacon's life. His life itself all this time was occupied with his instalments of Natural History. When he made his vow that he would produce one or more of these in each succeeding month (a rash vow if it had not left him free to release himself from it upon any sufficient occasion), he assigned to the first six successive months the following portions: the History of Winds; of Density and Rarity; of Heaviness and Lightness; of Sympathy and Antipathy of Things; of Sulphur, Mercury, and Salt; of Life and Death. "The History of Winds," together with introductions to the remaining five, was published in November. But on further consideration he determined to change the order, and take the "History of Life and Death" next. This he did because he thought it would be more immediately useful, by turning the industry of medical men to higher

aims than that of curing a few diseases and pronouncing the rest incurable. But it proved to be a work of much greater length than the first, — about twice as long in fact, — and it seems to have taken about three months to finish and carry it through the press. "In none of his writings," says Mr. Ellis, "is there more appearance of research;" nor have any of his writings of this kind received such high praise, from a judge so competent, as this has received from Haller, in the passage which Mr. Ellis quotes. I do not know that any step which has been made in medical science can be traced to it — such steps are rarely made in any science except by men who have made the study of it their special occupation; but the spirit and general principles of the investigation probably gave impulse and direction to more students than were aware of it; and at any rate the work sufficiently accounts for the employment of his own time during the winter months of 1622, and gave additional proof of his fitness for the high vocation to which only he now aspired. "That Lord," says Chamberlain, writing on the 10th of February, 1622–23, "busies himself altogether about books, and hath set out two lately, '*Historia Ventorum*,' and '*De Vitâ et Morte*,' with promise of more. I have not yet seen either of them, because I have not leisure; but if the life of Henry the 8th, which they say he is about, might come out after his own manner, I should find time and means enough to read it."

There seemed at this time to be a glimmer of better fortune. Buckingham, who had become in his correspondence with him much more like his former self, had been as good as his word, and on the 20th of January brought him to kiss the King's hands. Sir Edward Conway, a man favorably disposed towards him, had been made Secretary of State. There had been complaints against Cranfield, and quarrels between him and Williams. Mandeville, who had always been an admirer

and a friend, was shortly to be allied to Buckingham by the marriage of his son with a kinswoman of his; and there was a rumor abroad that he would be made Lord Chancellor, and that Bacon would succeed him as President of the Council, and have his debts paid out of the King's coffers. Friendly words from Williams do not count for much, for we have already seen that he could use them when both his feelings and actions were quite the reverse. But if he was assured that Buckingham's feelings towards Bacon had changed, there was no danger, whatever his own feelings might be, of active opposition from him.

Whether all this boded any real good to Bacon it is difficult to judge. But if it did, his evil fate interfered once more to cross it. An adventure so extraordinary and beyond all reasonable probability that it seemed to him "like a fable of the poets," took Buckingham suddenly out of England and kept him at Madrid for eight months. The last unlucky dispute between the King and the House of Commons upon a point of mere constitutional theory, which had nothing to do with the immediate business of the day, and might certainly have been postponed, as similar quarrels had often been postponed before, to a more convenient season, — a dispute arising out of an incidental remark made by the King, which had no bearing upon the questions under consideration, and was not intended as a preface to any action, and one in which neither party would have lost, by putting it by for the present, any advantage in dealing with it at the proper time; while both would have gained in the better chance of attaining the object for which at present both were contending, — this dispute, ending as it did in another dissolution with mutual dissatisfaction, with no provision made for raising an army, and with the utter destruction of all the moral effect upon opinion abroad which had been hoped for from the exhibition of

“the good and perfect union between the King and his subjects,” had produced a sudden change in the policy and plans of Spain. Since the Spanish Government found that there was no chance of obtaining by means of the marriage with England any considerable advantages for the Catholic Church, they had secretly abandoned the intention of carrying it out, and only kept the treaty on foot as a means of accomplishing their other ends. But such a breach as this between the King and his Parliament opened new prospects. Gondomar believed that it was the end of Parliaments in England. Even Digby felt that our trust must now be in the laurel branch without the sword; for the support of Parliament could not be relied upon for means of war; that if the Palatinate was to be recovered it must be through the coöperation of Spain; and that the coöperation of Spain could only be secured by concluding the marriage. Of this, however, he was in good hope. For it had always been their policy to make England believe that they were sincere in desiring the restoration of the Palatinate, and he thought it impossible that Philip should consent to send his sister with a dowry of £500,000 to a country with which, if he did not mean honestly in that, he would certainly be at war in a very short time. That Philip did not “mean honestly about the Palatinate” appears to be certain. He meant to hold James in the belief that he would help to obtain it for him, until it were otherwise disposed of; and then to tell him that he could do no more. As early as March, 1622, he had conveyed to the Emperor a secret assurance to that effect. He had informed him that the transfer of the Electorate to Maximilian would not be opposed at Madrid, provided it were so carried that James could be made to believe “that the thing had been done against the wish of the King of Spain.” How far he was in earnest at this time about the marriage it is not easy to make out. But the breach between the



King and his last Parliament, as it had convinced Digby that Parliament could not be relied upon for effective support in case of war, appears to have inspired Gondomar with a fresh hope of converting England. The Prince, who had not shown much interest as yet in his own marriage, was much grieved for his sister; and Gondomar seems not only to have created in him the same belief which had been so strongly impressed upon Digby, that the restoration of the Palatinate would follow the marriage as a matter of course, but to have persuaded him that a visit to Madrid *incognito*, with only two servants, would expedite the marriage. If he were weak enough to go, it was not likely that he would be strong enough to resist the influences which would then be brought to bear upon him; and if the future King of England could be brought to profess himself a Catholic, the marriage would prove a very profitable investment. It had been settled before Gondomar left England that the visit should be paid, if on his arrival in Spain he found it advisable. On the 27th of September, just after the news of the fall of Heidelberg had reached England, the Prince and Buckingham wrote to remind him of it. In the beginning of December they received from him a private message that he would be glad to see the Prince. In February, 1622-23, they got leave to go. On the 7th of March they arrived at Madrid. And at this time it was that, according to the indiscreet avowal of the Spanish minister Olivarez, the match began to be really intended on the part of Spain.

The history of the diplomatic game between the young and old players which followed does not concern me at present except as it concerned Bacon, and it concerned him chiefly as withdrawing from the Court at a critical time the two persons whose influence over the King might have counteracted that of the busiest and most useful of the councillors with whom they left him. For

Cranfield, though he rose through the favor of Buckingham, had grown so fast into credit with the King, that (according to Clarendon) he had begun to think he needed his favor no longer, and in his absence "was not only negligent in the issuing out such sums of money as were necessary for the defraying those unlimited expenses . . . but had the courage to dispute his commands and to appeal to the King, whose ear was always inclined to him." And if Cranfield could use his influence with the King to resist Buckingham's demands, when they concerned his own business or pleasure, we may easily imagine the fate of those which concerned only Bacon's means of living.

The Prince and Buckingham left England in disguise on the 18th of February, and the letters which follow will tell their story for themselves.

TO SIR EDWARD CONWAY.

GOOD MR. SECRETARY,—When you visited me, you expressed in so noble a fashion a vif sense of my misfortunes, as I cannot but express myself no less sensible of your good fortunes, and therefore do congratulate with you for your new honor now settled. The excellent Marquis brought me yesterday to kiss the King's hands. So as now methinks I am in the state of grace. Think of me and speak of me as occasion serveth. I shall want no will to deserve it, at least nobleness is never lost. I rest

Your affectionate friend to do you service,

FR. ST. ALBAN.

BED. HOUSE, this 21st of Jan., 1622.

TO THE MARQUIS OF BUCKINGHAM.

EXCELLENT LORD,—I perceive this day by Mr. Comptroller that I live continually in your Lordship's remembrance, and noble purposes, concerning my fortunes, as well for the comfort of my estate as for coun-

tenancing me otherwise by his Majesty's employments and graces, for which I most humbly kiss your hands, leaving the times to your good Lordship; which, considering my age and wants, I assure myself your Lordship will the sooner take into your care. And for my house at Gorhambury, I do infinitely desire your Lordship should have it, and howsoever I may treat, I will conclude with none, till I know your Lordship's further pleasure; ever resting

Your Lordship's most obliged

and faithful servant,

FR. ST. ALBAN.

BED. HOUSE, this 5th of Feb., 1622.

It will be seen from this that Lord Macaulay's explanation of the cause of Bacon's poverty after his fall requires correction. "He was not easily persuaded," says he, "to give up any part of the magnificence to which he had been accustomed in the time of his power and prosperity. No pressure of distress could induce him to part with the woods of Gorhambury. 'I will not,' he said, 'be stripped of my feathers.'" Aubrey does no doubt tell us that "when his Lordship was in disfavor, his neighbors, hearing how much he was indebted, came to him with a motion to buy Oakwood of him:" upon which his "Lordship told them 'he would not sell his feathers.'" But he tells it not in illustration of his extravagance, but as a good saying; and it may be quite true, without implying any unreasonable reluctance on Bacon's part to conform to his fortune and seem to be as poor as he was. A gentleman may be in great distress and yet very properly decline to sell his coat and hat. Gorhambury was a beautiful place, fit for a nobleman's dwelling, and had a fancy value. To strip it of its woods would probably have reduced that value by much more than any one would have offered for the timber. We see from the concluding paragraph of this letter that he was

now intending to sell the place altogether, and though he never succeeded in finding a purchaser, we have no reason to suppose that he ever refused fair terms. And we have a further proof that he could part with magnificence to relieve himself from distress, in the fact that at this time he removed from Bedford House, where he had been living lately, and retired to his old lodgings in Gray's Inn, "for quiet, and the better to hold out."

At this time an unexpected chance presented itself of obtaining the sort of provision which he stood so much in need of, under conditions peculiarly suitable and becoming, and free from all objection. It may be remembered that on the 26th of July, 1608, when he was meditating on the measures to be taken for the publication and furtherance of the new philosophy, and more particularly for procuring histories of nature as well in her errors and wanderings as under the pressure of the mechanical arts, one of the measures which occurred to him (being then only Solicitor General, with no prospect of speedy advancement) was the procuring for himself some situation fit for carrying on such a work.

"Laying for a place to command wits and pens. Westminster, Eton, Winchester, . . . Trinity College in Cambridge, St. John's in Cambridge, Maudlin College in Oxford; and bespeaking this betimes with the King, my Lord Archbishop, my Lord Treasurer."

His course of rapid advancement, which began a few years after, and his growing importance as a law officer and councillor, had set this speculation aside. But now that office and income and importance in council were gone, such a situation became again for the same reason a thing to be desired. And, strange to say, it offered itself just at the right time, and gave the King an opportunity of doing a good thing which (if he had done it) would have been one of the best remembered acts of his life, and best deserving to be remembered with honor.

"The Provost of Eton," says Chamberlain, writing on the 5th of April, "was cut of the stone this day sennight, and being so weak before, it is doubted he will hardly hold out. Sir William Becher hath a promise to be his successor, which seems strange at first sight that he should be preferred before so many and great pretendants, as (among divers others) the Lord St. Alban's, Sir Robert Naunton, Sir James Fullerton, etc. So that some conclude it was but first come and first served, to avoid the importunity of so many competitors. But withal it shows that the world grows hard here, or that the place is risen in reputation, when it hath such wooers."

And again on the 19th, —

"The Provost of Eton outlived nine days, which is counted the fatal time for those that be cut of the stone, but died two days after; when the canvass began afresh, and Sir Robert Naunton laid in hard for it, offering to quit all pensions, promises, and pretensions whatsoever. But the King reserves that and all matters of grace till the Lord of Buckingham's return; yet he hath renewed his promise to Sir William Becher and sent letters to the College not to proceed to any election till they know his further pleasure. But I hear underhand he is like to have a hard condition annexed, — to marry the widow or provide for her and her children.

It was long before the appointment was finally disposed of. But as far as Bacon was concerned the question was settled by a letter from Buckingham on the 27th of October, stating that he had engaged himself before he went to Spain to Sir W. Becher, "so that he could not free himself, unless there were means to give him satisfaction." Bacon, having no means left that could have served such a purpose, accepted the answer as conclusive, and what he would have made of the office — which, placing him at the head of the principal place in England for the education of youth, would have supplied him with a fit field for work both legislative and administrative — must be left to conjecture.

## CHAPTER V.

A. D. 1623. OCTOBER—MARCH. ÆTAT. 63.

BACON's bad health during the spring and summer of the year interrupted his work, and though it appeared after his death that he had not altogether forsaken the natural histories which were to have followed the history of "Life and Death," but had spent a good deal of labor upon several of them, and especially upon the history of "Density and Rarity," which was to have come next, he was obliged to give up the attempt to complete and publish them at intervals as he had intended. In the autumn of 1620 the reason he gave for publishing the "*Novum Organum*" incomplete was that "he numbered his days, and would have it saved." What he had gone through since must have brought the end of his days a good deal nearer; and the repeated "sicknesses" of this year warned him to select such business as he might hope to finish. Now it was his opinion that a modern language could not be trusted to carry a book down to future ages; that to give it a chance of "lasting as long as books last" it must be in "the general language." He thought it expedient, therefore, to make safe the books which he had published in English by having them translated into Latin; and this appears to have been his principal occupation during this summer. It was a work for which he could obtain sufficient assistance to relieve him from the main labor, and which it was nevertheless necessary that he should watch and superintend: suitable, therefore, for a season when his health would not allow of continuous

work, and it seemed probable that his working days would soon be at an end altogether.

As far as the future ages were concerned, time does not seem to approve his opinion. To judge by present appearances, Latin is not the language in which a book may be expected to last longest and command either the largest audience or the fittest. As long as scholars conversed with each other in Latin, it was for them a living language and could express new ideas; but when they ceased to use it for that purpose, it ceased to be a common language except for the past; and men found that they could exchange new ideas better by learning their neighbors' tongues and writing in their own; whence it has come to pass that a book will now find its way to those whom it addresses more easily, more certainly, and more extensively, if written in any living language which has a literature, than it would if written in Latin. But in Bacon's time this was not so; and though his apprehension that the English of his own day might become unintelligible to the intelligent of future generations was apparently groundless, it was quite true that it was intelligible only to a small fraction of his own. For the preservation of his writings to posterity, English was probably the safer vehicle, but for the diffusion of them among his contemporaries on the continent of Europe, Latin was indispensable.

I have elsewhere given my reasons for thinking that he brought out the "Advancement of Learning" somewhat in a hurry to meet a special occasion, — the rare accident of the accession to the crown of a really learned man in the prime of life, who might possibly take an interest in the great project for the regeneration of philosophy which he had already conceived. He wrote it in English (probably because it was important to lose no time), but he always meant to have it translated into Latin, because "the privateness of the language wherein it was written"

excluded so many readers: and this before he had any thoughts of making it a part of the "Instauratio." Having now determined to make it serve for that general survey of the intellectual globe, — that summary account of the existing condition of human knowledge, — with which the "Instauratio" was to begin, it was necessary not only to have it translated but to have large additions made to it. We have seen that this work was so far advanced in the preceding summer that he expected to have it finished before the autumn. Many causes may have contributed to delay its progress; among others, the quantity of entirely new matter to be inserted, which would naturally increase upon him as he went on with the revision of the work of his translators — and which was enough in fact to fill more than 150 folio pages of the printed volume. By the time, however, that the Prince and Buckingham returned safe and sound, to the great joy of England, from a position which had latterly been rather perilous, the whole work was complete and ready for delivery.

In the spring of 1622 Bacon had been relieved, as we have seen, from the clause in his sentence which forbade him to come within the Verge of the Court. He now felt a strong desire to be relieved from that other clause which forbade him to sit in Parliament, — and to be so relieved with the good liking of the Lords themselves; which had always been the condition on which he asked for any favor in his troubles; and without which, indeed, this particular favor would have been of no value. Desiring that the motion should come from themselves, and if possible from those who were most independent, he did not proceed by formal petition, but addressed himself privately to two of the most prominent members of the popular party in the Upper House, — who had taken an active part in the proceedings against himself, and were most opposed to Buckingham and the Court party, — the Earl of Southampton and the Earl of Oxford.



Not having been degraded from his rank as a Peer, he would, I suppose, be summoned to attend each Parliament in the usual form (for the Clerk of the Crown was not officially informed of his disqualification); but having been forbidden ever to sit in Parliament, he could not obey the summons without an express warrant releasing him from that part of the sentence. I do not know exactly what authority the House of Lords had in the matter, or whether they had any power to remit a punishment awarded in a former Parliament by themselves. Probably not. But an intimation to the King that they wished to readmit Bacon into their company would no doubt have procured the necessary warrant. And it must have been this, I think, in which he now desired the favor and furtherance of these two noblemen. For though he speaks of "wishing to have *his writ*," it appears from a later letter that it was not the writ itself, but the liberty to use it, which he wanted. Writing to Sir Humphrey May at New-year's tide, 1625 (that is, 1625-26), he says, "My writ for Parliament I have now had twice before the time, and that without any express restraint not to use it." And yet it is evident that he regarded himself as still excluded and unable to sit without a pardon. Whence we may also infer that these two letters which follow had been without effect:—

TO THE RIGHT HONORABLE HIS VERY GOOD LORD THE  
EARL OF SOUTHAMPTON.

MY VERY GOOD LORD, — It pleased your Lordship when we met last, and did not think, I dare say, that a Parliament would have been so soon, to assure me of your love and favor; and it is true that out of that which I have heard and observed of your noble nature I have a great affiance in your Lordship. I would be glad to receive my writ this Parliament, that since the root of my dignity is saved to me it might also bear fruit, and that I may not die in dishonor.

But it is far from me to desire this except it may be with the love and consent of the Lords: if their Lordships shall vouchsafe to think me worthy of their company or fit to do them service, or to have suffered sufficiently, whereby I may now be after three years a subject of their grace as I was before a subject of their justice.

In this matter I hold your Lordship's favor so essential as if God shall put it into your heart to give me your favor and furtherance, I will apply my industry and other friends to coöperate with your Lordship. Otherwise I shall give over to think of it; and yet ever rest

Your Lordship's affectionate and humble servant,

FR. ST. ALBAN.

Last of January, 1623.

TO THE EARL OF OXFORD.

MY VERY GOOD LORD,— Let me be an humble suitor to your Lordship for your noble favor. I would be glad to receive my writ this Parliament, that I may not die in dishonor. But by no means, except it should be with the love and consent of my Lords to readmit me, if their Lordships vouchsafe to think me worthy of their company; or if they think that which I have suffered now these three years, in loss of place, in loss of means, and in loss of liberty (for a great time), to be a sufficient expiation for my faults, whereby I may now seem in their eyes to be a fit subject of their grace, as I have been before of their justice. My good Lord, the good which the commonwealth mought reap of my suffering, is already inned. Justice is done. An example is made for reformation. The authority of the House for judicature is established. There can be no further use of my misery; perhaps some little may be of my service; for I hope I shall be found a man humbled as a Christian, though not dejected as a worldling. I have great opinion of your Lordship's power, and great hope for many reasons of

your favor; which if I may obtain, I can say no more but nobleness is ever requited in itself; and God (whose special favor in my afflictions I have manifestly found to my comfort) will I trust be my paymaster of that which cannot be requited by

Your Lordship's affectionate humble servant, etc.

But though Bacon's voice was not to be heard again in Parliament or Council, we have one more note of what he would have said there, which for us is as good as a speech reported, if not better.

The last Parliament had been broken up, it will be remembered, upon a dispute about the abstract right of the House of Commons to discuss matters the ordering of which belonged to the Crown. The discussion itself did not threaten any difference in action which might not have been got over. By the help of some mutual concessions (for which they were prepared on both sides) they could have agreed pretty well as to what should be done. The Commons, when they found what difficulties their advice would involve, would have consented to modify it.<sup>1</sup> The King, if his right to interfere had not been disputed or ignored, would not have insisted upon interfering.<sup>2</sup> But the Commons could not be content without declaring that their privilege of discussing such questions was an "ancient and undoubted birthright;" while the King could not be content without an acknowledgment that they enjoyed it by the grace and favor of the Crown. It was a matter of principle on both sides, on which neither could give way. The Commons entered in their books a formal record of their claim. The King

<sup>1</sup> "Even now they had no wish to impose terms on the King. One member after another rose to point out that their petition did not even require an answer." Gardiner, vol. ii., p. 135.

<sup>2</sup> "He had at Williams's suggestion lowered his demands till he asked for nothing more than a mere polite acknowledgment of a historical fact." *Ib.* p. 147.

sent for their books and tore the record out. And on these terms they parted, leaving that old dispute in a condition more inconvenient than ever for adjustment. But though there was no chance of settling it, there was hope that in the next Parliament it would be allowed to sleep; for recent events had brought the government and the people into better agreement as to practical objects.

In the autumn of 1621, when the state of the negotiation was explained to the two Houses by Digby, the difference of opinion between the Commons and the King as to policy was large and important. If Digby's report had been followed by a proposal to raise a force for the conquest of Spain, the recovery of Bohemia, and the overthrow of Popery, it is probable that the Commons would have taken it up with zeal, foreseen no difficulties, and suspended other disputes. But the recovery of the Palatinate only, leaving other things as they were, — Bohemia in the hands of the Emperor, England in alliance with Spain, the Prince in treaty for an Infanta, and the English Catholics encouraged by toleration, — was not an object in the pursuit of which they could forget everything else. They wished for it, and meant no doubt to secure it; but they wanted to secure a great deal more, and they did not observe that the course which it was proposed to take for the rescue of the Palatinate would be crossed by an attempt to accomplish the rest. The hope of the government was that if the cause of the Palatinate could be separated from the cause of Bohemia; if the demand were limited to the *status quo ante bellum*; and if at the same time it were seen that military preparations were in progress to enforce it, — then Spain, whose interest in the marriage made her a natural ally of England in this matter, would join with England in pressing the Emperor to consent. But to make this policy successful, it was important that the country should

seem to be of one mind; and the debate in the House of Commons betrayed too clearly that this was not the case. They voted indeed by general consent a single subsidy, which would have been enough to sustain the garrisons in the Palatinate through the winter, but they postponed the rest, alleging that there was no hurry; and their course left it doubtful whether they were ready to grant more except upon conditions involving a total change of policy. For they coupled the offer of the single subsidy with a petition setting forth their own view of what should be done; and this was in direct opposition to the course to which the government had committed itself. Spain being in their eyes the great enemy and Popery the great evil, they would have had the King put himself at the head of the Protestant powers of Europe, declare war against Spain, marry the Prince to a Protestant, enforce the execution of the laws against Recusants, educate Papists' children under Protestant schoolmasters, prevent them from leaving England, and prohibit absolutely the restoration of forfeited lands.

So main a difference, though if the question of the abstract right had not been thrust in, it need not have caused an irreconcilable quarrel, must have seriously embarrassed the national action. But when the new Parliament met in February, 1623-24, the conditions of the question had been materially changed. On the 29th September, 1622, the case of the Palatinate had been laid before the Council for advice; and the Council, judging that the time had come which they had anticipated in their first report (March 5th, 1616-17), — the time when the treaty might be broken off "upon some material point of religion," — had advised prompt and peremptory action. The recent fall of Heidelberg, which had made the Prince impatient for the marriage by means of which he looked for its recovery, had made the Council impatient for a decisive answer as to the intentions of Spain.

“After a long and anxious deliberation, extending over four days, it was decided that a direct summons should be addressed to the King of Spain. Seventy days would be allowed him to obtain from the Emperor the restitution of Heidelberg ; and if it should happen that either Mannheim or Frankenthal had also been taken, it was to be restored as well. Philip was also to engage that the negotiations for a general peace should be resumed on the basis laid down in the preceding winter, and to bind himself by an express stipulation that if the Emperor refused to consent to these terms he would order a Spanish army to take the field against him, or at least would give permission to an English force to march through Flanders into the Palatinate. If within ten days after this resolution was laid before Philip, he had not given a favorable answer under his hand and seal, Bristol [*i. e.* Digby] *was to leave Madrid at once, and to declare the marriage treaty broken off.*”<sup>1</sup>

A letter from Gondomar, received a few weeks after, full of promises that all obstacles to the match would soon be removed, made no change in the opinions of the Council ; and had this advice been fairly acted upon, the Spanish game would have been then at an end. For this, however, the King was not yet prepared. Bristol was directed to make the demand, but in case of an unsatisfactory reply, instead of coming away at once he was to wait for further instructions. This spoiled the effect, and left room for the Prince’s visit to Madrid ; which, though in many ways mischievous, had this good effect, that it brought the King over at last to the views of the Council, which were already in harmony with the feelings of the nation ; and thus gave a fresh chance of united action between the government and the House of Commons. Before the new Parliament was called, the marriage treaty had been finally broken off. By which party it had been broken off is a matter of dispute, but of no consequence. Both were glad to be rid of it after they found that the advantages which each had expected from

<sup>1</sup> Gardiner, vol. ii., p. 256.

it were not to be had by either ; and it remained merely for each to put the other as much in the wrong, according to the rules of diplomatic morality, as possible. But the point upon which it really was broken off was this. James had all along been made to believe that the marriage would carry with it the assistance of Spain to recover the Palatinate. But he had believed it on Gondomar's word, which he assumed to be as good as his own, and had exacted no formal or explicit engagement. As the time of performance came nearer, while the preparations for performance showed no advance, he began to doubt, and desired better security. And as soon as the Prince was safe in England again, he sent instructions to Bristol not to proceed further with the ceremonies preceding the marriage, until he had received a promise under the King of Spain's hand to help, "with his arms, if mediation failed," to restore Frederick to his honors and inheritances.<sup>1</sup> This made it necessary to postpone the proxy-marriage beyond the time prefixed ; and involved a breach of contract which Philip immediately took advantage of to postpone it indefinitely. I say "took advantage," because if he had not wished to break the marriage treaty off there was nothing whatever to prevent him from consenting to the delay. But the truth was that he did wish to break it off, and was glad of an opportunity to do it handsomely. Even when he intended and desired the marriage, he never intended to quarrel with the Emperor about the Palatinate ; and yet he had used language, or allowed language to be used, which was understood, and meant to be understood, as a promise that he would obtain its restitution. And since he found that there was no chance of converting the Prince, he had not desired the marriage at all ; and yet he had pledged himself to conclude it. The postponement of the proxy ceremony at the instance of the other

<sup>1</sup> Gardiner, vol. ii., p. 439.

party beyond the time agreed upon, gave him an opportunity of getting rid of both obligations, without laying himself open to a charge of bad faith; and he did not let it slip. Upon the first intimation that the ceremony must be postponed, "the temporary gallery along which the Infanta was to have walked to the church in which the ceremony was to be performed was dismantled and removed. She herself ceased to be addressed by the title of Princess of England. The Prince's letters were no longer allowed to reach her. Her English grammars and dictionaries were restored to the shelf. The marriage was considered as indefinitely postponed."<sup>1</sup> All which was natural and judicious, if the King of Spain's object was to be freed from the engagement; but not otherwise. For what would have been lost by the mere postponement of the proxy-marriage, except the days during which it lasted? The parties were young enough. A few weeks' delay would not have made less desirable a marriage which was otherwise to be desired.

Regarded as a mere game of diplomacy the older and more experienced players had the best of it, as might have been expected. From the time that the Prince and Buckingham arrived in Madrid, the King lost all control over the negotiation; he could only make good their doings. Bristol was in effect, though not formally, superseded; and the Prince himself, without putting himself under anybody's guidance or giving to anybody his full confidence, appears to have become the principal actor. It is no wonder, therefore, that mistakes were made and advantages given and opportunities thrown away. Fortunately the great mistake of all — which would have been the conclusion of the match without any of the good it promised — was (however unhandsomely) avoided. The negotiation was at an end, and the politicians of the time were not curious to criticise the manner in which

<sup>1</sup> Gardiner, vol. ii., p. 446.



the end was brought about. They were content to believe that Spain had been playing false and had been found out. Both the Prince and Buckingham were received with acclamations, as the saviors of the country. And the King being at last fairly delivered from the Spanish alliance, having no further hope to compass his ends by negotiation, and being prepared to sanction warlike measures, could now (as it seemed) go the same way with his people, and count on the cordial concurrence and support of a new House of Commons. The experience of the last House being available for the next, they would know not only what they wanted but also how much they must be prepared to pay for it (for it could not be less than what had been announced as necessary in 1622): and there seemed to be no danger of any misunderstanding, provided disputes were not allowed to arise about abstract rights and constitutional doctrine. If their right to debate questions of peace and war were disputed, there would be no harmony. But that danger was happily avoided by an announcement from the King himself, that the principal cause of his calling this Parliament was "for their advice whether he should proceed any further in his treaties with Spain about the match for the Prince or concerning the restitution of the Palatinate:" that Buckingham would explain to both Houses the history of the negotiation and the present state of our relations with Spain, and they were to consider *super totam materiam* what was best to be done. The most patriotic member could hardly extract out of that an occasion to insist upon the right of advising without invitation or permission.

The story was told accordingly on the 24th of February: and with a view to the debate which was to follow, Bacon (to whom the turn of affairs must have been very welcome, this being the sort of accident which he had long looked forward to as the likeliest to rectify the relations between the King and people) drew up a sketch of

a speech, containing the advice which he wished to be given to the House of Commons on this occasion, and which might have been spoken in the debate on the 1st of March, 1623-24.

NOTES OF A SPEECH CONCERNING A WAR WITH SPAIN.

That ye conceive there will be little difference in opinion, but that all will advise the King not to entertain further a treaty wherein he hath been so manifestly and so long deluded.

That the difficulty, therefore, will be in the consequences thereof. For to the breach of treaty doth necessarily succeed a despair of recovering the Palatinate by treaty; and so the business falleth upon a war. And to that you will apply your speech as being the point of importance and besides most agreeable to your profession and place.

To a war (such as may promise success) there are three things required: a just Quarrel, sufficient Forces and Provisions, and a prudent and politic choice of the Designs and Actions whereby the war shall be managed.

For the Quarrel. There cannot be a more just quarrel by the laws both of nature and nations than for the recovery of the ancient patrimony of the King's children gotten from them by an usurping sword and an insidious treaty.

But further, that the war well considered is not for the Palatinate only but for England and Scotland. For if we stay till the Low-Countrymen be ruined and the party of the papists within the realm be grown too strong, England, Scotland, and Ireland are at the stake.

Neither doth it concern the State only but our Church. Other kings papists content themselves to maintain their religion in their own dominions. But the kings of Spain run a course to make themselves protectors of the popish religion even amongst the subjects of other kings.

Almost like the Ottomans that profess to plant the law of Mahomet by the sword; and so the Spaniards do of the Pope's law. And therefore if either the King's blood or our own blood or Christ's blood be dear unto us, the quarrel is just, and to be embraced.

For the point of sufficient Forces. The balancing of the forces of these kingdoms and their allies with Spain and their allies you know to be a matter of great and weighty consideration. But yet to weigh them in a common understanding, for your part you are of opinion that Spain is no such giant; or if he be a giant, it will be but like Goliath and David; for God will be on our side.

But to leave these spiritual considerations, you do not see in true discourse of State and War that we ought to doubt to be overmatched. To this opinion you are led by two things which lead all men; by Experience and by Reason.

For Experience. You do not find that for this age (take it for 100 years), there was ever any encounter between Spanish and English of importance either by sea or land but the English came off with the honor; witness the Lammas day, the retreat of Gaunt, the battle of Newport, and some others. But there have been some actions both by sea and land so memorable as scarce suffer the less to be spoken of. By sea, that of eighty-eight, when the Spaniards putting themselves most upon their stirrups sent forth that invincible Armada which should have swallowed up England quick. The success whereof was, that although that fleet swam like mountains upon our seas yet they did not so much as take a cock-boat of ours at sea nor fire a cottage at land, but came through our channel and were driven as Sir Walter Raleigh says by squibs (fire-boats he means) from Calais, and were soundly beaten by our ships in fight, and many of them sunk, and finally durst not return the way they came, but made a scattered perambulation full of shipwrecks by the

Irish and Scottish seas to get home again ; just according to the curse of the Scripture, that they came out against us one way and fled before us seven ways. By land, who can forget the two voyages made upon the continent itself of Spain ; that of Lisbon and that of Cales. When in the former we knocked at the gates of the greatest city either of Spain or Portugal and came off without seeing an enemy to look upon us in the face. And though we failed in our foundation (for that Antonio whom we thought to replace in his kingdom found no party at all), yet it was a true trial of the gentleness of Spain, which suffered us to go and come without any dispute. And for the latter, of Cales, it ended in victory ; we ravished a principal city of wealth and strength in the high countries, sacked it, fired the Indian fleet that was in the port, and came home in triumph ; and yet to this day were never put in suit for it, nor demanded reason for our doings. You ought not to forget the battle of Kinsale in Irèland, what time the Spanish forces were joined with the Irish (good soldiers as themselves or better) and exceeded us far in number, and yet they were soon defeated, and their general D'Avila taken prisoner, and that war by that battle quenched and ended.

And it is worthy to be noted how much our power in those days was inferior to our present state. Then : a lady ; old ; and owner only of England ; intangled with the revolt of Ireland, and her confederates of Holland much weaker and in no conjuncture. Now : a famous King and strengthened with a Prince of singular expectation, and in the prime of his years ; owner of the entire isle of Britain ; enjoying Ireland populate and quiet, and infinitely more supported by confederates of the Low Countries, Denmark, divers of the princes of Germany, and others. As for the comparison of Spain as it was then and as it is now you will for good respects forbear to speak. Only you will say this, that Spain was then

reputed to have the wisest counsel of Europe, and not a counsel that would come at the whistle of a favorite.

Another point of experience you would not speak of, if it were not that there is a wonderful erroneous observation walketh about contrary to all the true account of time; and it is, That the Spaniard where he once gets in will seldom or never be got out again (and they give it an ill-favored simile which you will not name). But nothing is less true. They got footing at Brest and some other parts in Britaine, and quitted it. They had Calais, Ardes, Amiens, and were part beaten out and part they rendered. They had Vercelles in Savoy, and fairly left it. They had the other day the Valtoline, and now have put it in deposit. What they will do at Ormus we shall see. So that, to speak truly, of later times they have rather peached and offered at a number of enterprises than maintained any constantly. And for Germany in more ancient time, their great emperor Charles, after he had Germany almost in his fist, was forced in the end to go from Isburg as it were in a mask by torch-light, and to quite very foot of his new acquests in Germany: which you hope likewise will be the hereditary issue of this late purchase of the Palatinate. And thus much for Experience.

For Reason. It hath many branches; you will but extract a few.

First; It is a nation thin sown of men, partly by reason of the sterility of their soil; and partly because their natives are exhaust by so many employments in such vast territories as they possess. So that it hath been counted a kind of miracle to see together ten or twelve thousand native Spaniards in an army. And although they have at this time great numbers of miscellany soldiers in their armies and garrisons, yet if there should be the misfortune of a battle they are ever long about it to draw on supplies. They tell a tale of a Spanish ambassador that

was brought to see the treasury of St. Mark at Venice, and still he looked down to the ground ; and being asked the reason, said he was looking to see whether the treasure had any root, so that if that were spent it would grow again, as his master's had. But howsoever it be of their treasure, certainly their forces have scarcely any or at least such a root as putteth forth very poorly and root, slowly ; whereas there is not in the world again such a spring and seminary of military people as in England, Scotland, and Ireland ; nor of seamen as is this island and the Low Countries. So as if the wars should mow them down, yet they suddenly may be supplied and come up again.

A second reason is (and it is the principal) that if we truly consider the greatness of Spain it consisteth chiefly in their treasure, and their treasure in their Indies, and their Indies (both of them) is but an accession to such as are masters by sea. So as this axle-tree whereupon their greatness turns is soon cut a-two by any that shall be stronger than they at sea. So then you report yourself to their opinions and the opinions of all men, enemies or whosoever ; whether that the maritime forces of Britain and the Low Countries are not able to beat them at sea. For if that be, you see the chain is broken, from shipping to Indies, from Indies to treasure, and from treasure to greatness.

The third reason (which hath some affinity with this second) is a point comfortable to hear in the state that we now are. Wars are generally causes of poverty and consumption. The nature of this war, you are persuaded, will be matter of restorative and enriching. So that, if we go roundly on with supplies and provisions at the first, the war in continuance will find itself. That you do but point at this and will not enlarge it.

Lastly, That it is not a little to be considered that the greatness of Spain is not only distracted extremely and

therefore of less force ; but built upon no very sound foundations ; and therefore they can have the less strength by any assured and confident confederates. With France they are in competition for Navarre, Milan, Naples, and the Franche County of Burgundy. With the see of Rome, for Naples also. For Portugal, with the right heirs of that line. For that they have in their Low Countries, with the United Provinces. For Ormus (now) with Persia. For Valencia with the Moors expelled and their confederates. For the East and West Indies with all the world. So that if every bird had his feather Spain would be left wonderful naked. But yet there is a greater confederation against them than by means of any of these quarrels or titles ; and that is contracted by the fear that almost all nations have of their ambition, whereof men see no end. And thus much for the balancing of their Forces.

For the last point, which is the choice of the Designs and Enterprises, in which to conduct the war, you will not now speak. Because you should be forced to descend to divers particulars whereof some are of a more open and some of a more secret nature. But that you would move the House to make a selected committee for that purpose. Not to estrange the House in any sort, but to prepare things for them, giving them power and commission to call before them and to confer with any martial men or others that are not of the House that they shall think fit, for their advice and information. And so to give an account of the business to a general committee of the whole House.

These notes are described by Robert Stephens, who first printed them, as “heads for a speech in Parliament to be made by Sir Edward Sackville, afterwards Earl of Dorset.” If so, they cannot have been used : for his name is nowhere mentioned either in the list of members of this Parliament or in the journals. It may be, how-

ever, that he had intended to stand, and been prevented by the state of his brother's health, who died on the 28th of March, leaving him heir to the Earldom; and so the notes may have been drawn up as a memorial of what Bacon wished him to say, though he had not the opportunity of saying it.

The issue of the debate for which the speech was intended — a debate corresponding to what we should now call the debate on the address — was satisfactory enough. The Commons were all eager to advise the King to proceed no further with either treaty. And though the King — partly from the irresolution of age and growing infirmity, partly from unreadiness to embrace an action so foreign to all his tastes and habits and for which he had no heart, and partly from a not unreasonable caution which former trials had taught him — was shy of committing himself to a war without being sure of means to carry it on, and stood upon conditions to which the Commons on their part were shy of yielding; he was induced at last, upon a vote of three subsidies and three fifteenths payable within one year from the day when the treaties should be declared at an end, to make the requisite declaration. The announcement of which was followed by bonfires and rejoicings, which the King disapproved, as being a triumph before a victory, but with which Bacon sympathized so heartily that he is said to have contributed on his own account four dozen fagots and twelve gallons of wine.

Bacon's personal opinion as to the policy of the Spanish alliance may be best inferred from his "Short View to be taken of Great Britain and Spain," printed in the first chapter of this Book.<sup>1</sup> It was an opinion upon which he had never till now been able to urge action, even as a Councillor; for since he was in a position to

<sup>1</sup> See above, pp. 363-369.



offer advice there had never till now been a time when existing engagements did not interfere, and make such action impracticable or unjustifiable. The declaration that the treaties were at an end cleared the field at last, and left the course open for a more popular policy : and hence no doubt his sympathy with the manifestations of public satisfaction.

But this was only the clearing of the board for a new game. The debates in the Commons, which showed so much eagerness to begin it, contained no evidence of a knowledge of the conditions, or how it was to be played. A war of some kind it was to be : but of what kind, and for what object, and on what ground, were questions on which opinions differed. If it was to be an offensive war *for the recovery of the Palatinate*, as was generally supposed, — (the only offensive war for which there was any color), — they knew how many subsidies it would require. In February, 1620–21, the last House, had been officially informed by the Secretary of State that an army sufficient for the recovery of the Palatinate could not be sent out and kept in a state of efficiency for less than £500,000 a year : and in the following November, when upon the failure of the negotiations the state of things was explained to them by Digby, they were told that the force required for the work they wanted would cost £900,000 ; an estimate agreeing much more nearly with the detailed calculations of the Council of War, and therefore presumably much nearer the truth. But however that might be, it was the last official information upon the subject which they had received from those who had the means of knowing. Now £900,000 was more than seven subsidies and fourteen fifteenths would yield. And yet now, when in answer to their request for the dissolution of the treaties and their promise of support “in a Parliamentary way,” the King told them that the support of a war with Spain would require a grant of six

subsidies and twelve fifteenths, they were quite unprepared for such a demand: and towards the close of a long debate upon the answer to be given, Coke himself — after remarking that this would “come to £900,000” (the exact figure, by the way, at which Digby had set it in November, 1621), which was more, he said, than all England could supply — proposed to bring the cost within the limits of “conveniency,” not by reducing the scale or altering the plan and aim of the expected war (for the recovery of the Palatinate was, by him at least, expressly included in the work to be done), but simply by postponing the provision for two thirds of it.

“Divide this sum into three parts. £300,000 for the present. . . . So many subsidies as shall amount to £300,000. . . . By this means we shall get enough to serve for the present.”

He meant, I presume, that they would provide for the other two thirds when they were wanted. But who could say what, or on what conditions, they would be disposed to provide when they next met? For the recovery of the Palatinate does not appear to have been thought an object of such prime importance by the members of the House as it was in the country and by the government. There were those among them who did not consider it either as the special aim or as a necessary part of the proposed war. With some of them the breach with Spain and alliance with the United Provinces was enough in itself; and, as in that case it would only be necessary to put England into a state of defense, the £300,000 might be thought by them to be sufficient not only for the present, but altogether. Of general promises that they would on some future occasion place all they had at the disposal of the government, the government had had enough from the last House. And in this case there were particular indications to suggest caution. We do not know what was said in the committee of the whole

House to which the question was referred. But we know the result of the debate, and that the motion came out with a significant amendment. Coke's proposition was to give £300,000 "for the present," specifying that it was for five things: 1. The securing of Ireland. 2. The defense of our own coasts. 3. Preparation of our navy. 4. To join with the Low Countries and assist them. 5. *The recovery of the Palatinate*. "These things the work: to specify our gifts to be for these." The resolution of the Committee was to grant "for the present, towards the support of the war which was likely to ensue, and more particularly those *four* points proposed by his Majesty, namely, the defense of this realm, the securing of Ireland, the assistance of our neighbors the States of the United Provinces and other his Majesty's friends and allies, and the setting out of his Majesty's royal navy" (the fifth point — the recovery of the Palatinate — being entirely omitted), "three subsidies and three fifteens, to be levied in such manner," etc. Nor was the omission undesigned. How far it expressed the sense of a majority of the House we cannot tell. It may have been suggested by some more acute member, who perceiving the incongruity of providing £300,000 for a service which they were told would require £900,000, moved the omission of the words which made it conspicuous; and the House may have agreed, without meaning to abandon the Palatinate. But it had its effect: and it was appealed to the next year as a proof that the House was not bound to contribute anything more on that account. In a debate in the Oxford Parliament (5 August, 1625), Mr. Alford gave it as his opinion "that they were not engaged to give for the recovery of the Palatinate; for when it was in the Act of Parliament, as it was first framed, it was stricken out by order of the House, as a thing unfit to engage the House for the recovery of the

Palatinate ; and if possible, yet not without great charge and difficulty."

However that may have been, one thing is evident : that there was no clear general understanding as to the nature and objects of the war on which they were entering ; and that however the government conducted it, they would be in danger of meeting with contrary currents of opinion which might leave them short of supplies in some critical conjuncture. The Prince said that "the King's sword was a long one ; when it was once out it would not easily go in again." But he could not have said that his purse was a long one, or that when war was once declared the sinews of it might not easily fail. The danger was that — the practical control of affairs being now in the hands of young and inexperienced men who were eager to begin and saw no difficulties (for the King, though retaining his judgment, had lost his authority) — they would rush blindly into the enterprise without pausing to consider what was to be done, or what conditions were necessary to make it successful. And it was probably from observing or apprehending this that Bacon, whose "notes for a speech" seemed to have been aimed rather to meet objections drawn from the danger and difficulty of the undertaking, was induced to take them in hand again ; and, laying his other studies by for the time, to enlarge them into a full discussion of the whole question, and present it to the Prince.

The two first divisions of this treatise were printed as a separate pamphlet in 1629 — a "corrupt and surreptitious edition," according to Dr. Rawley ; and again the same year by Rawley himself, in the volume entitled "Certain Miscellany Works of the Right Honorable Francis Lo. Verulam Viscount S. Alban." But the third, which related to "the choice of designs and enterprises," being, for obvious reasons, unfit to be made public at that time, was omitted, and has never appeared in

print. Among the Harleian MSS. in the British Museum, however, there is a copy of the entire treatise, including the last division.

This was Bacon's last contribution to the political business of his day. I do not know whether any use was made of it. But I fancy that the chance had been postponed too long and came too late; and that the domestic condition of the country would have made it impossible at that time to carry out such an enterprise successfully. A war like this could not be entered upon without money. Money could not be had without the concurrence of the House of Commons. The Commons would not grant money for a war without security that it would be carried on in the way they approved. If they had been qualified themselves to assume the control of military operations, the King might, no doubt (by anticipating one or two revolutions), have made it over to them, and then there would have been no difficulty about the money. But war was a business of which they had few professors among them, and of which indeed they knew so little that they were not yet aware how much they needed the help of those who knew more. Bacon, as we have seen, would have had them recommended to advise the renunciation of the treaties, and then (seeing that if the Palatinate was to be recovered at all it must be by a war) to appoint a select committee with power "to confer with any martial men or others, that were not of the House, for their advice and information;" and to hear their report before they proceeded further. Through such a select committee they might have learned what force would be required, and what expense it would involve: and then they would have been in a condition to consider whether they could find the money for it. But the necessity of such a select committee, and of taking the opinions of "martial men that were not of the House," does not appear to have occurred to them. After debating the ques-

tion among themselves in committee of the whole House, they resolved, at the suggestion of an old lawyer crammed with precedents from the wars of the Plantagenets, to grant "enough for the present;" that is to say, enough to enable the government to *begin* a war; what was "enough" being a third part of what they understood would be wanted to carry it through; and their reason for granting no more at present being an apprehension that the country could not at present afford more. Now to send an army into the heart of Europe with only a third part in hand of the money which would be required to raise, equip, transport, and keep it efficient, and no better security for the rest than a hope that the same House would find the country able to afford it at the end of another half-year, — and that too for an object which was losing its value in their eyes so rapidly that though only three years ago they thought it worth all they had, they did not now think it worth mentioning,<sup>1</sup> — would have been to court disaster; and therefore the King's most prudent course would have been to confine himself "for the present" to the objects indicated in the preamble of the grant — namely, the strengthening of England and Ireland for defense, the preparation of the navy for action, and the assistance of the United Provinces — and

<sup>1</sup> Compare the two following extracts from the debates. June 4, 1621. "The Commons in Parliament assembled, taking into consideration the present estate of the King's children abroad, and the afflicted estate of the true professors of the same Christian religion professed by the Church of England and other foreign parts . . . with one heart and voice do solemnly protest that if his Majesty's pious endeavors by treaty to procure their peace and safety shall not take that good effect he desireth . . . that then upon the signification of his pleasure in Parliament *they shall be ready to the uttermost of their powers both with their lives and fortunes to assist him*, so as . . . he may be able to do that by his sword which by peaceable courses shall not be effected." — *Proc. and Debates*. Aug. 5, 1625. "Mr. Alford. He holdeth we are not engaged to give for the recovery of the Palatinate; for when it was in the Act of Parliament as it was first penned, it was stricken out by order of the House, as a thing unfit to engage the House for the recovery of the Palatinate; and, if possible, not without great charge and difficulty." — *Commons' Debates*, 1625, p. 135.

to leave "the estate of his children abroad" as it was, until means should be provided sufficient to redeem it. But it was natural for the Prince, in the flush of his new popularity, and with his mind wholly bent upon the recovery of his sister's inheritance, to take a more sanguine view of the temper of the Commons who had formerly shown themselves so eager in the quarrel, and to urge present action; not doubting that if the sword were once out of the scabbard the rest would follow. The King himself, too, whose only pretense for declaring war against Spain was her treatment of the Palatinate, did not like to throw it over altogether. But since the cost of a "conquering army," upon the scale and plan proposed three years before, could not be brought below £700,000 a year, he was obliged to content himself with supplying a contingent to a miscellaneous army under Count Mansfeldt and strengthening and encouraging his continental allies with men and money.

Mansfeldt's army was to have aimed directly at the reconquest of the Palatinate. But between bad luck and bad management it proved a complete failure and did nothing. A result doubly unfortunate; for besides missing its object, it made the Commons more disinclined than before to trust the government with means sufficient for a more successful attempt. And the effect was seen a few months after in the next Parliament; when the first appeal of the new King for "such supply as the greatness of the work and variety of provision did require," in a war which he had earned their extravagant applause by helping them to bring about, met with a reception which plainly showed that the hot fit of their war-fever had already given place to the cold. The new House which met at Westminster in June, 1625, though composed mostly of the same men and guided by the same leaders as the last, knew nothing about the Palatinate, and acknowledged no engagement to grant further

supplies. "The promises and declarations of the last Parliament," they said, "were in respect of a war." What war? "They knew yet of no war, nor of any enemy." What need, then, for more than two subsidies? Did not Queen Elizabeth, with less supplies "defend herself, consume Spain, assist the Low Countries, relieve France, preserve Ireland?" "They diminished the King, who thought money could give him reputation. The hearts of his subjects were his greatest honor and reputation." And this was to be the demonstration of their hearts.

Now, in case of a really popular war — a war for an object upon which the mind of the people is seriously bent — it has always been usual in England for a disaster at the beginning to be followed by a more determined and vigorous effort to retrieve it. We are all very angry with those in whose hands the first attempt fails, and often very cruel and unjust to them. But we never think of resting there and accepting the defeat. Is it conceivable that the high-couraged leaders of the country party in Charles's first Parliament would have regarded the loss of 10,000 men in an ill-conducted expedition as a reason for giving up the object of that expedition, if they really cared for it? Yet the offer of two subsidies at such a time, as being all that the King could want, — what could it mean but that they meant the enterprise to be abandoned? The motion, though it surprised the government, caused no disappointment in the House. It was so well in accord with the general feeling that it was accepted without any opposition and with scarcely any debate: for when "divers courtiers," who had not expected that business was to come on that day, arrived late, "though they were provided to have spoken and meant to have urged for a larger proportion, yet not knowing how the debate had passed, and seeing no likelihood of prevailing, they held their peace." If the House had



insisted as a condition of granting money for the war that war should be forthwith declared ; or that it should be conducted in some particular way, or directed to some particular end, and upon that condition had offered an *adequate* supply ; or if they had themselves undertaken to criticise the estimates and show that less would be enough ; their course might be explained without supposing that they had ceased to care for the object of the war. But there is no trace in any of these debates of an attempt to criticise the plan of action, or to suggest a better, or to show that it need not cost so much. The government estimates had been framed upon careful calculations of all the items that would be wanted and all that each would cost. The Commons knew what they were, and they had nothing better to oppose to them than vague stories of what had been done in old times by Plantagenets and Tudors ; as if because the furniture of war cost less formerly than it did then, it could be obtained then for less than its cost. What the estimated cost was no member knew better than Sir Edward Coke, nor was any member more decided in his opinion that more than two subsidies could not now be wanted. And how did he make it out ? The estimate (which he summed up himself and did not dispute) was £900,000. Of this the last House had granted one third ; at the same time, if not engaging itself, at least intimating an intention which was meant to be relied and acted upon, to supply the rest when it was wanted. What the present House offered would amount to £140,000. So that even “ if we were engaged,” said he (which we were not) “ we have performed it.”<sup>1</sup> The arithmetic is difficult ; but the terms

<sup>1</sup> August 5, 1625. *Commons' Debates*, p. 34. The words of the report are : “ Our country does not trust us to engage them but only by act of Parliament ; and yet if we were engaged we have performed it. We gave the last Parliament £400,000 : now two subsidies, besides the tonnage and poundage.” The tonnage and poundage were not to the purpose ; because (having been always reckoned as due) the estimated cost of the war was over and above it. The £400,000

of the engagement were not the question. The question was, what to do. Even if the payment of £400,000 had been the "performance" of an engagement to pay £900,000, it was not enough to carry on the war with. For whether it were right or wrong that it should be so, — whether the Plantagenets and Tudors would have managed better or not, — the fact was undeniable that money must be found, or the war for the recovery of the Palatinate could not go on, all the money at the disposal of the government being already spent or pledged. And the coolness with which men like Sir Robert Phelips not only laid all the fault of failure upon the government (which was natural and according to English precedent in all times), but prepared to accept the failure itself with all its consequences and let it rest there without an effort to retrieve it (which was quite contrary to English precedent in all times), proves to me that they had ceased to care for the result: and I think it is impossible to read the account of the debates at Westminster and Oxford either in the copious notes of them recently published by the Camden Society, or with Sir John Eliot's commentary as given by Mr. Forster from the "*Negotium Posteriorum*," without feeling that the country party had lost all anxiety for the reconquest of the Palatinate and felt no very lively interest in the other issues of the war with Spain. They had come (I suspect) to look on it as *Buckingham's* war: and since his reputation depended upon its success, it may be that the leaders of the country party would have been better pleased with a defeat than a triumph. The short season of applause and adulation was over, and as Buckingham was entering upon a new lease of unbounded favor with the King, which carried with it unbounded power over the conduct of affairs, they

is perhaps a misreport for £300,000. For I do not know how it is made out. But either way the amount granted falls far short of the sum required, — and I should say promised.

had come to regard him as the public enemy, and were bracing themselves for another war on another field for another stake, — the war of the Commons against the Crown. Bacon's long-cherished hope, that a foreign quarrel in a popular cause would bring the King and the people together and make them for a while at least forget their differences, had been in this case disappointed. If the occasion had come earlier, or if the beginnings had been more fortunate, the effect might perhaps have been different; and even now some brilliant military success might have revived the popularity of the cause. But it is not probable that the reconciliation could have been permanent. For the powers retained by the Crown and the powers acquired by the Commons had in truth become incompatible with each other, and could not have kept truce under any searching difference. The Commons had become too powerful to remain as they were. Being able to paralyze the action of government, it was necessary that they should be able to control it. The inevitable struggle was now coming to the crisis. In *this* war they were altogether in earnest, and would accept no disaster as a defeat: nor was the struggle destined to end until the supreme control of affairs was in effect transferred to those who had already the supreme command of the purse; and they had learned to exercise it, not directly by Committees of the whole House, but by a standing Committee of responsible advisers of the Crown, — now called the Cabinet — selected nominally by the Crown, but really by themselves, responsible to them, and removable at their pleasure.<sup>1</sup> An arrangement which Coke himself could not have pretended to justify by any precedent from the times of Plantagenet or Tudor; but one under which the government can always contrive to obtain from the nation as much money as the affairs of the nation require.

<sup>1</sup> See *The English Constitution*. By Walter Bagehot, pp. 11-15.

## CHAPTER VI.

A. D. MARCH 1624 — APRIL 1626. *ÆTAT.* 64-66.

IT must have been clear to Bacon by this time that the hopes of relief which had been held out to him after his fall, by the King and Buckingham, however sincere and well meant, were not to be fulfilled. Nothing had occurred since to show him less worthy of provision for a studious life. No further notice had been taken of his case in either house of Parliament. The justice of his decrees in Chancery had in no instance been successfully impugned. He had abstained from all interference in public affairs. He had pursued his private studies with unabated diligence and vigor. And though the King's Exchequer was empty of money and his hands full of work which wanted it, there can be little doubt that such moderate supply as his case needed might easily have been provided ; and that if his help and advice in the great affairs then on foot had been required in return, the money would have been very profitably invested. The language used towards him was still gracious and encouraging ; but nothing came of it ; a fact from which he could only infer that there was no sufficiently earnest intention behind. He moderated his hopes accordingly, and limited his petition to so much advance of his pension as might enable him to pay off his debts, and so much forbearance in the exaction of his rent to the Crown as might leave him the means of living in the mean time, — favors which would not cost much, — together with a pardon of the Parliamentary sentence, which would cost nothing.

Meanwhile, as the literary services which he had offered to the King in return for the bounty which he had desired were not called for, he applied himself henceforward exclusively to his own work, in which he had lost neither faith nor zeal, though the troubles of want must have sadly interfered with its progress. Amid continual interruptions by creditors, whose claims could neither be repudiated nor satisfied, even the collection of *Natural History*, though mainly a matter of memory, was pursued at great disadvantage. In works like the second part of the "*Novum Organum*," which required intense and continuous attention, progress was hardly possible under such a condition. Indulgences from the Crown, therefore, sufficient to set him free from other creditors, were of real importance to him, and might be considered as part of the provision without which his business could not be carried on. And yet his pecuniary embarrassment, with all that it entailed, was not the trouble which seems to have weighed heaviest upon his mind. What touched him more deeply was the wounded name that would live behind him. He had forfeited the good opinion of his fellow-countrymen, and he extremely desired to recover it, and to have the recovery marked by some public act of absolution. He knew the nature and the depth of his own offense and the state of his own mind. He knew that he had not been a corrupt judge in the sense of one who could be induced by the offer of a reward to decide a case unjustly ; but he had countenanced a practice which he could not deny to be dangerous, not only to the reputation for integrity, but to the integrity itself, of the judicial office ; a practice for which the best excuse he could offer was one which might have been more easily allowed in the case of any other man than himself, — namely, that it was "the abuse of the times." It was a great fault, and deserved to be visited by a great forfeiture. This he fully felt and admitted. From the moment that

he was made to see clearly what he had done, he had acknowledged it to be indefensible ; from the moment that he heard the sentence, he had acquiesced in it as just. But he had been laboring in the service of his country and of mankind too long, too earnestly, and too unselfishly, to believe that he had deserved to be an outcast forever. And though in that higher Court where all are pardoned who truly repent and unfeignedly believe, he felt that his sincere penitence and unreluctant submission, joined, as it had been with so strenuous an endeavor to turn his remaining days to what he believed to be the best account, had deserved and procured his pardon, — though he read in the condition of his mind and the undiminished activity of his faculties an intimation and pledge of the divine forgiveness, — he still desired some human acknowledgment that his offense, if not redeemed, had at least been sufficiently punished, and that he was not to be transmitted by his own generation to the posterity whose servant he aspired to be with a brand of infamy upon his brow, — as a man marked out for contempt. He longed to see that blot removed by the hands that put it on, — to be readmitted into the House of Lords ; to receive a full pardon of the whole sentence ; to have his honors preserved in memory by translation after his decease. It was not much to ask ; and to us it may seem at first sight a thing of too small consequence to have been much worth the seeking : for we do not find that our own estimate of him depends in any degree upon the question whether the desired pardon was or was not granted. Nevertheless one generation tells another, and though we flatter ourselves that we can judge of former times better than those who lived in them, we seldom do more than hear their tale and repeat it. It is probably true that if he had come better recommended to us, we should have received him more graciously. But however that may be, the apprehension of parting from the countrymen

whose good he had so much desired without a word of kindness or a mark of reconciliation, and of going down to future ages in a character so unlike the truth, was the bitterest drop in his cup; and of the two branches of the petition which now contained all he asked — that he might “live out of want, and die out of ignominy” — the last was the one which he seems to have valued most, though the first was the most pressing.

Towards the end of June, 1624, as soon as Buckingham had recovered from a long illness which he had at that time, Bacon communicated to him the following petition; leaving it to him to decide how it should be recommended to the King: —

AN HUMBLE PETITION OF THE LORD ST. ALBANS TO HIS  
MAJESTY.

That whereas your supplicant is now three years old in misery, during which time he hath tasted of your Majesty's mercy, but not of your bounty, which his services past and necessity present may implore,

Your Majesty of your grace will so far compassionate your supplicant as to give order that he may have three years' payment of his pension beforehand; which in effect is but a borrowing. And this may enable him to overcome his debts, but then because he shall want for his present maintenance, your Majesty will also be pleased during those three years, till his pension run again, to discharge him of the rent of £1,000 reserved upon his farm of petty writs.

And your supplicant shall (as ever) pray for your Majesty's health and happiness.

To this he received from Buckingham an answer, which though it was long in coming was very friendly and encouraging when it came, conveying the King's consent to grant *half* the petition — the three years' advance, which

was something, though it did not meet the difficulty of "present maintenance."

It had been placed in Buckingham's hands before the end of June. Bacon's acknowledgment of his report of the King's answer is dated the 9th of October. The delay must, in the circumstances, have seemed long; and during the interval Bacon prepared a second petition, asking for a favor which would cost nothing to anybody. This I must leave to speak for itself; for all we know about it is that, if presented at all, it must have been presented in vain.

#### TO THE KING.

MOST GRACIOUS AND DREAD SOVEREIGN,—Before I make my petition to your Majesty, I make my prayers to God above, *pectore ab imo*, that if I have held anything so dear as your Majesty's service, nay your heart's ease, and your honor's, I may be repulsed with a denial. But if that hath been the principal with me, that God, who knoweth my heart, would move your Majesty's royal heart to take compassion of me and to grant my desire.

I prostrate myself at your Majesty's feet; I, your ancient servant, now sixty-four years old in age, and three years five months old in misery. I desire not from your Majesty means, nor place, nor employment, but only, after so long a time of expiation, a complete and total remission of the sentence of the Upper House, to the end that blot of ignominy may be removed from me, and from my memory with posterity; that I die not a condemned man, but may be to your Majesty, as I am to God, *nova creatura*. Your Majesty hath pardoned the like to Sir John Bennet, between whose case and mine (not being partial to myself, but speaking out of the general opinion) there was as much difference, I will not say as between black and white, but as between black and grey, or ash-colored. Look therefore down, dear Sovereign, upon me also, in



pity. I know your Majesty's heart is inscrutable for goodness; and my Lord of Buckingham was wont to tell me you were the best-natured man in the world; and it is God's property, that *those he hath loved, he loveth to the end*. Let your Majesty's grace, in this my desire, stream down upon me, and let it be out of the fountain and spring-head, and *ex mero motu*, that, living or dying, the print of the goodness of King James may be in my heart, and his praises in my mouth. This my most humble request granted, may make me live a year or two happily; and denied, will kill me quickly. But yet the last thing that will die in me will be the heart and affection of

Your Majesty's most humble,  
and true devoted servant,

FR. ST. ALBAN.

July 30, 1624.

What became of this pathetic appeal, nothing, so far as I am aware, remains to tell us. We find indeed in the "Cabala" (ed. 1663, p. 270) a warrant addressed by the King to the Attorney General with directions to prepare a full pardon; to which the editor who first introduced it into Bacon's works has prefixed the words: "In answer to the foregoing by King James." But for this I find no authority, and as I am informed by Mr. Gardiner that no traces of Bacon's pardon are to be found either on the Patent Rolls from 1623 to his death, or in the Signet Office Docquet books, I conclude that this was only the answer which he wished for and drew up for the King to sign; but that it never was signed. We shall meet further on with a letter written after James's death, which proves conclusively that up to that time no such pardon had passed. The warrant as printed in the "Cabala" runs thus:—

KING JAMES HIS LETTER TO HIS TRUSTY AND WELL-BELOVED THOMAS COVENTRY, OUR ATTORNEY GENERAL.

Trusty and Well-beloved, we greet you well: Whereas our right trusty and right well-beloved cousin, the Viscount of St. Alban, upon a sentence given in the Upper House of Parliament full three years since, and more, hath endured loss of his place, imprisonment and confinement also for a great time, which may suffice for the satisfaction of justice, and example to others: We being always graciously inclined to temper mercy with justice, and calling to mind his former good services, and how well and profitably he hath spent his time since his troubles, are pleased to remove from him that blot of ignominy which yet remaineth upon him, of incapacity and disablement; and to remit to him all penalties whatsoever inflicted by that sentence. Having therefore formerly pardoned his fine, and released his confinement, these are to will and require you to prepare for our signature a bill containing a pardon in due form of law of the whole sentence; for which this shall be your sufficient warrant.

In December of this year Bacon published two very small volumes, both composed for occupation in a fit of sickness, and both well chosen for the purpose, though of little importance: namely, his collection of "Apophthegms, new and old," in which he amused himself with dictating from memory as many memorable sayings as he could recollect, and his "translation of certain Psalms," in which he turned six or seven of the Psalms of David into English verse,—almost his first attempt in the art. Fitter exercises could not have been chosen when work of some kind was wanted, and all excitement or strain of mind was to be avoided; nor is there anything in the ex-

ecution of either to require explanation or cause surprise. The only wonder is that he should have thought these worth publishing, while he had by him in manuscript so many things of more importance in every way. My own conjecture was that he did not like to publish in an imperfect shape things of more serious import, as long as he could hope to perfect them: but that he owed money to his printer and bookseller, and if such trifles as these would help to pay it, he had no objection to the use of them for that purpose. And though Mr. Grosart protests against such a supposition as far as the Psalms are concerned, observing that they were not printed by his usual printer nor published by his usual publisher,<sup>1</sup> I am still inclined to think it the most probable explanation. Even if it could be shown that the new firm did not inherit the business of the old, which nevertheless does not seem at all improbable,<sup>2</sup> the explanation might still be substantially true. The first edition of the "Essays" (a small octavo volume, containing less matter than the "Apophthegms," and only about three times as much as the "Psalms") had been found to be worth reprinting many times over, and Bacon's name as an author had rather gained than lost in value since. Any work by him of a popular character, a moderate price, and in English, would be sure to be worth something in the market; and whether the printer took it in payment of a debt due to himself, or paid for it in money which would help to discharge other debts, the motive for publishing would be intelligible and sufficient either way.

Of his correspondence during these months the only

<sup>1</sup> *The Fuller worthies' library miscellanies. Lord Bacon's poems.* By the Rev. Alexander B. Grosart. 1870. Introduction, p. 7.

<sup>2</sup> The *Historia Ventorum* (1622) was printed by Jo. Haviland for Matthew Lownes and William Barret. The *Historia Vitæ et Mortis* (1623) was printed by Jo. Haviland for Matthew Lownes. The *Apophthegms and Psalms* (1625) were printed for Hanna Barret and Richard Whittaker. The names seem to me to suggest that there may have been, rather than to show that there could not have been, a connection between the firms.

traces I find are in Stephens's catalogue, and they are very few. Of the entries which bear no date, some may possibly belong to this period; but without the dates the descriptions are too brief to tell us. There is one, however, of a letter addressed to Buckingham on the 30th of January, 1624-25, the description of which is only too significant, showing that Bacon was still obliged to play the part of an importunate supplicant for some still unsatisfied suit. The contents are described as "pressing him to be mindful of his misery." His misery meant his pecuniary difficulties, — the straits he was in to find means to satisfy his creditors and provide for his inevitable expenses. His earlier biographers, with the best intentions, but I think with an unfortunate effect, have endeavored to draw a veil over this aspect of his case. Dr. Rawley avoided the subject,<sup>1</sup> and Tenison went so far on one occasion as to alter the wording of a letter in which a degree of poverty seemed to be acknowledged

<sup>1</sup> In a book published in France about the end of the last century, a passage on this subject is quoted as if from Rawley, about which there must certainly be some mistake. The book is entitled *Le Christianisme de François Bacon, Chancelier d'Angleterre, ou Pensées de ce grand homme sur la Religion*. A Paris, an. vii. The passage in question occurs in a note, vol. i., p. 174: "Voici les termes de Rawley, qui étoit un des légataires de Bacon. Neque est quod ullam ei post remotionem familiaris rei tenuitatem objicere velit: constat enim post hanc nihil quicquam horum quæ ad status magnificentiam fecissent defuisse, sed ita nihilominus vixisse, ut Jovi ipsi de felicitate controversiam facere velle visus fuerit, virtutis omnis, pietatis, humanitatis, patientiæ imprimis, exemplum maxime honorabile."

I do not know where this passage is to be found; but if it was really written by Dr. Rawley there must be a mistake in the word *defuisse*. He must have meant, not that the means of living in his former state were not wanting to him after his fall; but that the want was not felt; it did not prevent him from being an example of felicity, through a life of virtue, piety, humanity, and patience. But I rather suppose that the passage was the composition of some biographer who confused Rawley with Peter Böener, — who returned to Holland in 1623, and was under the impression that Bacon recovered his fortune after he left him. "His means," he says, "afterwards changed to what they once were, and then he kept the same state." (*Athenæum*, June 10, 1871.) Böener went upon hearsay, and may easily have believed this. Rawley knew that it was not so. The concluding clause of the extract is almost a translation from Böener. See the words quoted near the end of this chapter, p. 000.

more than became a gentleman. Where Bacon had written to the King that he had "spread the remnants of his former fortune in plate or jewels upon poor men unto whom he owed, — scarce leaving himself bread," Tenison struck out "bread" and substituted "a convenient subsistence." But Bacon could find no comfort in euphemisms like that. He liked to call things by their true names. The condition of a man who having lived in luxury finds himself in age and sickness at a loss for means to pay his baker and butcher is truly described as a miserable condition; and a frank recognition of the fact adds a deeper and more pathetic significance to an anecdote for which we are indebted to Tenison himself, and which, though the circumstances do not enable us to date it exactly, belongs probably to this period.

"Whilst I am speaking of this work of his Lordship's of 'Natural History,' there comes to my mind a very memorable relation, reported to me by him who bore a part in it, the Reverend Dr. Rawley. One day his Lordship was dictating to that Doctor some of the experiments in his 'Sylva.' The same day he had sent a friend to Court to receive for him a final answer touching the effect of a grant which had been made him by King James. He had hitherto only hope of it, and hope deferred; and he was desirous to know the event of the matter, and to be freed, one way or other, from the suspense of his thoughts. His friend returning told him plainly that he must thenceforth despair of that grant, how much soever his fortunes needed it. *Be it so*, said his Lordship; and then he dismissed his friend very cheerfully, with thankful acknowledgments of his service. His friend being gone, he came straightway to Dr. Rawley, and said thus unto him: *Well, Sir, yon business won't go on; let us go on with this, for this is in our power.* And then he dictated to him afresh for some hours, without the least hesitancy of speech or discernible interruption of thought."

If it had been a refusal of something more to a man who had enough, the thing would hardly have been worth

mentioning: in one who was struggling for subsistence, such equanimity in such a case was less easy. "But let me tell you," says his apothecary and secretary, Peter Böener, who was in his service till the beginning of 1623, "that though his fortune may have changed, yet I never saw any change in his mien, his words, or his deeds towards any man: *Ira enim hominis non implet justitiam Dei*: but he was always the same, both in sorrow and in joy, as a philosopher ought to be."<sup>1</sup>

There is one other entry of a letter to Buckingham, under the date of the 31st March, 1625, — shortly after King James's death, who died on the 27th, — described as "begging his intercession with the new King;" and beginning with the words "King Charles." But with these exceptions I do not think there are any which can be assigned with confidence to this half year.

This blank in the correspondence is tantalizing; for that half-year was full of important events. The "extreme prosperous success of his Majesty's business" during the twelve months preceding, upon which Bacon had congratulated with him in his letter to Buckingham of the 9th of October, 1624, — alluding, I suppose, to the progress of his negotiations with France, Sweden, Denmark, and the States, for combined action in Germany, — had been followed by a military disaster which ruined all. Through some unaccountable want of care or forethought on the part of somebody, the 12,000 men who were to have marched through France to join Mansfeldt arrived at Calais before any orders had been received for allowing them to land; and being thereupon taken to Zealand, met again with obstructions which detained them till half of their number had been carried off by pestilence. And so had ended the enterprise for the recovery of the Palatinate, and whatever hopes went with it. Soon after, the old King died, and the new King lost

<sup>1</sup> *Athenæum* of June 10, 1871.

no time in summoning a new Parliament, which was to have met on the 7th of May, though his approaching marriage delayed the meeting for five or six weeks. Buckingham had been sent to Paris to bring the bride ; and the next letter of Bacon's which has come down to us was written shortly before his return.

As far as his own fortunes were concerned, circumstances could hardly change but for the better ; and in this change there were two or three points in his favor. The sympathy which the Prince had shown for him during his impeachment, together with the admiration which he had expressed of his historical work, promised him a new friend on the throne. The French ambassador who was coming over with the Queen had been inspired by his works and reputation with so great a reverence for him that he asked leave to address him as a father. Buckingham, though their personal intercourse seems to have been at an end, professed himself in his letters as kindly disposed as ever ; and Sir Humphrey May, Chancellor of the Duchy, a distinguished member of the House of Commons and a man of influence at Court, was a private friend. It might have seemed therefore that the new time would bring a better chance of attention to his case. But the accidents were still against him. The business of the marriage was hardly over, when Charles had to appeal to a new House of Commons for means to carry out the great enterprise which the last House had promised, amid acclamations and waving of hats, to support with the lives and fortunes of all whom it represented ; and the response which he met with gave him so much to think of on his own account that he had no time to think of Bacon ; though if he had thought of asking his advice and following it, it might have been better for him.

The Plague had been raging in London all this summer, and Bacon himself (who appears to have remained

at Gorhambury) had been visited at the same time with a "dangerous and tedious sickness." It is some consolation in this dreary time to know that his belief in the value and virtue and final success of his great enterprise was never shaken. His earthly comforts were growing colder and colder. The hopes which he had indulged, first of a comfortable provision for a life of study, then of help to overcome his debts, and lastly of bare means "to live out of want and die out of ignominy," had one by one fallen away and left him desolate. But that the "mine of truth" which he was opening would keep its promise, and that Man would thereby in some future generation be the master of Nature and her forces, was a hope which continued with him to the end, and so refreshed and sustained his spirit that if the compositions of his last years are distinguishable at all from those of his prime, it is rather by their greater conciseness, solidity, and rapidity of style than by any signs of exhaustion or decay; and how far he was from feeling any abatement of mental power and activity we may gather from the quantity and nature of the work still lying before him, which he speaks of as intending and expecting to get it done. For though he leaves the sixth and concluding part of the "Instauration" — the "*Philosophia Secunda*" — to Posterity, as a thing which must wait for the third, — the collection of Natural History; and though he commends the third to Kings, Popes, or Colleges, as beyond the industry and endeavor of a private man: yet the remainder of the second part, which was to complete the description of the "*Novum Organum*," or new logical machinery, as well as the whole of the fourth, which was to contain examples of its correct use and application, and the whole of the fifth, which was to consist of his own provisional speculations, — "anticipations," as he called them in natural philosophy, — could be supplied by no hand but his own: and of these



he shows no signs of despairing. Life and health and leisure being allowed, he does not seem to have apprehended any want of faculty or spirit or courage.

The only work which Bacon published in 1625 was the third and last edition of his "Essays." Which of his posthumous writings were composed during that year, it is not possible to determine: for Rawley, who enumerates them "as near as he can in the just order wherein they were written," does not attempt to give the dates, and does not speak with certainty. His list, if exact in itself, and exactly considered, would imply that the "Fable of the New Atlantis" came before the "De Augmentis," which was published in the autumn of 1623; in which case one would have expected to find some mention of it in his well-known letter to Father Fulgentio; being, though not a part of the "Instauration," yet a representation in vision of the state of things which the "Instauration" was to bring about or make possible. But even without that, there remains enough to account for a year of very active literary occupation. The translations into Latin (upon which, in the summer of 1623, "his labors were most set") are enough of themselves to fill a volume of four hundred pages, while the "Essays" and the "Sylva Sylvarum" make another about as large.

Towards the end of this year the government met with another great military mishap. The indifference of the House of Commons to the war, and their unreadiness to provide means for carrying it on, had not been accepted by the King as a reason for declining it. An expedition had been planned and a fleet prepared; and it was hoped that a brilliant action and an abundant spoil would re-awaken the warlike spirit of the people and make the government popular. It was intended apparently to be a repetition with improvements of the fortunate action of the Earl of Essex in 1596. The shipping in the har-

bor of Cadiz was again to be surprised and destroyed; while the homeward-bound fleet from the Indies was to be intercepted and (this time) not let slip. There does not seem to have been any reason for doubting the success on this occasion more than on that, except the want (consequent on a long peace) of practice and proof in such enterprises. Such a success would no doubt have made a vast improvement in the position and prospects of the government. But it was not to be. The expedition returned in two months with the loss of a thousand men, having effected nothing except a landing of the troops without opposition, followed by a precipitate reëmbarkation before a stroke had been struck or an enemy seen; and without a single prize from the homeward-bound fleet, which sailed by in the night unobserved. The deaths had all been from pestilence. It must have been about the time of their return that Bacon wrote to Buckingham the following letter of congratulation on the birth of a son and heir; at the close of which I seem to perceive a hint, shyly and delicately conveyed, that his experience and advice might yet be of use to him.

The letter bears no date, and I should have inferred from the postscript that it was written about the 1st of January, 1625-26; but as the boy was born on the 17th of November, 1625, it seems rather late for congratulations; and perhaps he thought the new year already near enough to be remembered; the rather because he was not likely to have an excuse for writing again when it was nearer.

#### TO THE DUKE OF BUCKINGHAM.

EXCELLENT LORD, — I could not but signify unto your Grace my rejoicing that God hath sent your Grace a son and heir, and that you are fortunate as well in your house as in the state of the kingdom. These blessings

come from God, as I do not doubt but your Grace doth with all thankfulness acknowledge, vowing to him your service. Myself, I praise his divine Majesty, have gotten some step into health. My wants are great ; but yet I want not a desire to do your Grace service, and I marvel that your Grace should think to pull down the monarchy of Spain without my good help. Your Grace will give me leave to be merry, however the world goeth with me. I ever rest

Your Grace's most faithful  
and obliged servant, etc.

I wish your Grace a good new year.

About this time the troubles of Bacon's own house were aggravated by a new and unexpected calamity. His wife, with whom he had lived for twenty years without any reproach that we know of on either side, gave him some grave offense. The nature of it is not known, for he never specified it himself, and Dr. Rawley in his biography makes no mention of any domestic difference, but speaks of their married life in terms which almost exclude the supposition of any. But that she had in some way incurred his serious displeasure is a fact not to be disputed, being recorded by himself in his will, as a reason for revoking dispositions previously made in her favor. The expressions used by the historian Wilson, in speaking of their later relations, seem to reflect upon her fidelity ; and her subsequent marriage with her gentleman-usher, taken along with the comments of contemporary satirists, give some countenance to the scandal. If it was so, Bacon's conduct would be accounted for. But as nothing specific was laid to her charge either by himself or by any one with whom he had authority or interest, we are not entitled to say more than that she had done something which rendered her unworthy in his eyes of the benefits he had intended for her.

Though Bacon felt his health to be much impaired and his life precarious, and therefore took the precaution to provide as well as he could for the disposal of the little he had to leave, it was not as a man who felt that he was dying. As he recovered his health after each attack, he recovered his hope of living awhile longer and making further progress in his work. The letter which follows, addressed to his friend Sir Humphrey May at the beginning of the new year, and in contemplation of the meeting of a new Parliament, while it proves conclusively that he had not yet received a pardon of the Parliamentary sentence or leave to resume his seat in the House of Lords, proves also that he was still anxiously seeking and hoping to make use of it: and his death, which took place three months after, was not the result of natural decay but of an accidental chill, and was sudden and unexpected.

TO SIR HUMPHREY MAY, CHANCELLOR OF THE DUCHY  
OF LANCASTER.

GOOD MR. CHANCELLOR, — I did wonder what was become of you, and was very glad to hear you were come to court; which methinks, as the times go, should miss you as well as I.

I send you another letter, which I writ to you of an old date, to avoid repetition; and I continue my request then to you, to sound the Duke of Buckingham's good affection towards me, before you do move him in the particular petitions. Only the present occasion doth invite me to desire that his Grace would procure me a pardon of the King of the whole sentence. My writ for Parliament I have now had twice before the time, and that without any express restraint not to use it. It is true that I shall not be able, in respect of my health, to attend in Parliament; but yet I mought make a proxy. Time hath turned envy to pity; and I have had a long clean-

sing week of five years' expiation and more.<sup>1</sup> Sir John Bennet hath his pardon; my Lord of Somerset hath his pardon; and, they say, shall sit in Parliament. My Lord of Suffolk cometh to Parliament, though not to Council. I hope I deserve not to be the only outcast. God keep you. I ever rest

Your most affectionate friend

to do you service.

I wish you a good new year.

The Parliament which met on the 6th of February, immediately after the coronation, was the same which impeached Buckingham. It was not likely, therefore, that either he or the King would be so little occupied with their own business as to have leisure for attending to Bacon's, unless they had been prepared to take him into counsel. Whether at such a time Sir Humphrey thought it expedient to make the motion on his behalf, I do not know; but at any rate nothing was done. He was well enough to come up to London; but we have no particular account of his occupations there until the end of March, when in the course of a drive towards Highgate he took advantage of an unseasonable fall of snow to try whether it would preserve flesh from putrefaction, as salt does, and so caught the chill of which he died. The story is, that the idea suddenly occurring to him, he stopped the coach, alighted at a cottage, obtained a hen, helped to stuff it with snow with his own hands (and I suppose carried it with him to watch the effect); but on the way found himself suddenly so ill that he was forced to take refuge in a house of Lord Arundel's which lay in his road: to whom (being absent) he excused himself in the following letter — a letter evidently composed without any idea that he was dictating it from his death-bed, and

<sup>1</sup> Five years, speaking in round numbers; but not *more* than five. If the expiation be dated from the day on which he was accused, the fifth year was not completed before the 19th of March.

of which it is a great pity that the editor did not think fit to print the whole.

TO THE EARL OF ARUNDEL AND SURREY.

MY VERY GOOD LORD, — I was likely to have had the fortune of Caius Plinius the elder, who lost his life by trying an experiment about the burning of the mountain Vesuvius. For I was also desirous to try an experiment or two, touching the conservation and induration of bodies. As for the experiment itself, it succeeded excellently well; but in the journey (between London and Highgate) I was taken with such a fit of casting, as I knew not whether it were the stone, or some surfeit, or cold, or indeed a touch of them all three. But when I came to your Lordship's house, I was not able to go back, and therefore was forced to take up my lodging here, where your housekeeper is very careful and diligent about me; which I assure myself your Lordship will not only pardon towards him, but think the better of him for it. For indeed your Lordship's house was happy to me; and I kiss your noble hands for the welcome which I am sure you give me to it, etc.

I know how unfit it is for me to write to your Lordship with any other hand than mine own; but in troth my fingers are so disjointed with this fit of sickness, that I cannot steadily hold a pen.

This letter (being as it happened the last which Bacon ever wrote) is treated by Lord Macaulay as if it had been written *in extremis*, when another man would have forgotten all about the experiment. To me it seems such a letter as a gentleman would naturally dictate who is laid up with a bad cold in another man's house, and has lost the command of his fingers. All the incidents, up to the time of the seizure, imply spirit and activity of both body and mind; and as we know from Dr. Rawley that the

collection of Natural History was his last work, we may suppose that he was proceeding with unabated diligence in the trial of experiments, solitary or in consort, touching the various processes of nature, when the accident happened. Nor is there any reason to think that at the time he dictated the letter there was ground for apprehending anything serious. But the story goes on to say that the housekeeper in his anxiety to entertain him handsomely had put him in the best bed; which, having been long unused in the absence of the family, was damp in spite of the warming-pan. This brought on an attack of what would now be called *bronchitis*, which lasted some days, and ended (as that complaint so often does with people of all ages) in sudden suffocation.<sup>1</sup>

He died on the 9th of April, 1626, in the early morning of Easter Sunday; and thenceforward what men might think of him was a matter that concerned themselves and not him.

And yet if it were possible to believe that the dead can be disturbed by the proceedings of the living, his troubles were not yet over. Buckingham, whom he had entreated to act as supervisor, had more than enough to do in preparing his own answer to the thirteen articles upon which the Commons had impeached him. The friends and relatives whom he had appointed to be his executors either expressly refused or delayed beyond reasonable time to undertake the office. And the will had remained unexecuted for fifteen months, when let-

<sup>1</sup> "From this account," says Mr. Martin, after quoting Dr. Rawley's description of Bacon's last illness and death, "it appears that the malady which so rapidly brought Bacon to the grave was an inflammation of the air-cells of the lungs, now called '*bronchitis*.' This disease (the pathology of which was then not understood) most commonly occasions the death of old persons. In cases of this sort the proximate cause of death is, that the blood ceases to be either decarbonized or oxygenated, owing to the air-cells being, as it were, plastered over with a mucus, secreted by the membrane lining them, and which the debilitated patient is unable to expectorate." — *Character of Lord Bacon, His Life and Works*, by Thomas Martin, Barrister-at law. London, 1835.

ters of administration were granted (18 July, 1627) to two of his creditors — Sir Robert Rich and Sir Thomas Meautys. The sale of a property including such articles as Gorhambury and Verulam House, which were not for the common market,<sup>1</sup> was not likely in these circumstances to realize its proper value, and it is not surprising that the proceeds fell short of his expectations,<sup>2</sup> and failed not only to yield the surplus on which he had counted, but to pay their full shares to the creditors. The debts amounted to £22,371 1s. 3d., the assets apparently to little more than £7,000, the lands producing £6,000. What became of his books, which were left to Sir John Constable and must have contained traces of his reading, we do not know; but very few appear to have survived. His manuscripts fared better, the greater portion having been entrusted to Dr. Rawley; by whom they were edited — too long indeed after date to be justly appreciated by a new generation in an altered world, and not before many had gone abroad in imperfect shapes — but carefully and conscientiously, and from authentic copies. Others which had been left to Sir William Boswell, and were by him committed to Isaac Gruter, were less fortunate; and some (including as I suspect all the corrected copies of his legal works which he had selected for preservation) appear to have been lost altogether or

<sup>1</sup> "Now Verulam, good man, is in his grave,  
I muse who shall his House and Title have;  
That spacious — specious — precious refectorie,  
Which cost a world of wealth (so saith the story);  
Those pebble-paved brookes, empaled lakes,  
Thick clad with countless sholes of ducks and drakes."

*The Honest Ghost, or a Voice from the Vault.* Lond. 1658, p. 239.

<sup>2</sup> Gorhambury was conveyed to trustees for the use of Sir Thomas Meautys himself, who had married the only surviving daughter of Bacon's half-brother Nathaniel; and after his death was purchased by Sir Harbottle Grimstone, who married his widow. But Verulam House, in the construction and decoration of which Bacon had indulged all his tastes without care for the cost, — and it was said to have cost him nine or ten thousand pounds, — was sold forty or fifty years after "to two carpenters for four hundred," the value of the materials. See *Aubrey's Lives*.



to have survived only in the rough drafts. But upon the whole, "that durable part of his memory which consisted in his works and writings" may be said to have been well provided for, and to have descended to posterity in sound and good condition; with the great advantage of a popular reputation which has given a certain value in common opinion to everything which bears his name. For he was a famous man already, and his fame has never fallen into the shadow; his name has always been known to everybody as that of one whom everybody is bound to hold in high esteem as a philosopher, a scholar, a writer, a speaker, a thinker, and altogether a great and wise man, whose opinions (where you can be sure you have his real opinions) are always worth knowing and quoting. And so well has this reputation endured, that though his right to it has been called in question by men of great ability in more than one department, the questioners have never made any impression upon the popular judgment; not so much because people know how to answer as because they are not disposed to listen to them; Bacon's preëminence in matters intellectual being held to be one of the settled questions in the world, insomuch that any man who calls it in dispute commits a kind of contempt of court, — the court of popular opinion, which has jurisdiction in such cases. For as we believe in the judgments of the Courts of Law though we do not hear and could not understand the evidence and arguments, so we believe in the judgments which are passed upon dead men by popular acclamation, though we are not ourselves in a condition to justify them. This is fame, and (so far) it cannot be denied that we have done our best to show gratitude for what he has left us.

It is in respect to that other part of his name and memory which he bequeathed to "men's charitable speeches and foreign nations, and the next ages," that he would have been most painfully disappointed if to his other

misfortunes had been added the misfortune of seeing far into the future. Up to the day when the charge of corruption was brought against him, I fancy that he had thought himself, in his dealings with other men, not only unimpeachable but exemplary; a faithful and diligent servant; a considerate and indulgent master; a serviceable friend; a sound patriot, always meditating projects for the improvement and advancement of his country; an enthusiast of humanity, passionately ambitious to enlarge the powers, heal the diseases, and purify the condition of the human race; in debate, fair and courteous; in council, free, careful, candid; anxious that all things should be carried with due consideration for the just interests of all parties and without just offense to any; seeking for himself scarcely anything except work and the wages of work which he was well able to do and which he did well; receiving for himself nothing but what was freely offered, and giving more freely than he received; an honorable opponent, an indulgent censor, a faithful reporter, a laborious worker, an honest and unselfish adviser, an impartial and scrupulous judge, and filled (as himself could best witness) with tender consideration for all sentient creatures;—such being the ideal to which he had aspired, and, as he imagined, not wholly without success, *meanness* (in its modern sense) was probably the very last word with which he expected his name to be associated. And to have foreseen that the next ages, while they regarded him as the meanest would nevertheless honor him as the wisest and brightest of mankind, would have been to him the very reverse of consolation. To have been forgotten altogether would have been nothing; to be honored in that way was to be perpetually infamous; and (what was still worse) it could not but degrade the character of the very virtues for which the honor was to be awarded. The wisdom and brightness which could live for half a century in friendly relations with mean-

ness in the superlative degree must have been themselves mean. And though the currency of a quotable line by a popular poet cannot be taken as evidence of the serious judgment of posterity, the case is changed when it comes to be adopted, expounded, amplified, and justified by popular historians and biographers. Pope was merely preaching morality in sparkling couplets; he wanted a name to point his moral with; and if he could have thought of another that would have helped him to a better rhyme, he would no doubt have preferred it. But when Lord Macaulay, as the result of an elaborate historical and biographical inquiry, described Bacon as a man who, 'being entrusted with the highest gifts of Heaven, habitually abused them for the poorest purposes of earth, † hired them out for guineas, places, and titles, in the service of injustice, covetousness, and oppression,<sup>1</sup> —adding that he (Lord Macaulay) had nevertheless "no doubt that his name would be named with reverence to the latest ages and to the remotest ends of the civilized world," we must accept the responsibility of the opinion if we allow it to pass without a protest. If the later ages believe his description of the man to be correct, I hope for my own part that they will *not* name the name of that man with reverence; it would be a gross abuse either of the word or the thing. But it is still possible that they may adopt a different interpretation of the character.

The other actions on which Lord Macaulay's interpretation is founded have been fully and I believe correctly related; and (the evidence being now within anybody's reach) they must be left to produce their own impression. To me, so far from seeming to justify his theory of the character, they do not seem to be reconcilable with it;

<sup>1</sup> He goes so far as to insinuate that if the defense of the schoolmen could have been rewarded by "fees," or "peerages," or "rich reversions," Bacon would not have been a reformer in Philosophy.

if Bacon had been such a man as he takes him for, he would have acted differently at almost every crisis which offered him a choice. Nor do I believe that they would have suggested such a theory to anybody, were it not for the discredit which the transactions revealed by his impeachment threw back upon all the passages of his life. It must nevertheless be admitted that those transactions alone — if Lord Macaulay's interpretation of them be accepted in its full extent — would deprive his name of all title to anything that could be properly called "reverence," his services in the field of philosophy and literature notwithstanding. And as all turns upon the question whether his offense implied the perversion of justice for the sake of reward, it is necessary to discuss the grounds of that interpretation more particularly.

Bacon admitted that he had more than once received a present from a suitor whose cause was not concluded: that the act could not be defended; that it amounted to corruption, and deserved punishment. But he denied that he had ever received such present upon any bargain or contract, or had ever had any "bribe or reward in his eye or thought when he pronounced any sentence or order." The Parliamentary sentence he allowed to be both just and fit; but he affirmed at the same time that he had been the justest judge that had sate in Chancery for half a century.

Lord Macaulay, on the contrary, represents him as "practicing corruption on a large scale;" as "having many agents looking out in different quarters for prey;" as employing in this service "jackals" and "decoys;" as making "private bargains" with suitors as to the amount of their presents: and in fact as selling judgments by the hundred.<sup>1</sup>

The difference is not only large but vital; the question is, which are we to believe?

<sup>1</sup> "The hundreds who have got what they paid for are quiet." "Lord Bacon," by Thomas Babington Macaulay.

On the principle of giving the accused party the benefit of the doubt, it would be enough perhaps to say that before we believe such a charge we ought to be able to show some ground for it. Bacon, as we have seen, privately denied it: and if he did not deny it publicly, that may be sufficiently accounted for by the fact that it was never publicly made. No accusation to that effect is implied in any of the articles which he was required to answer. They state merely that the presents had been taken, but say nothing of any contract, condition, or unjust judgment. That no evidence can be produced from which we should be obliged to conclude that some of these presents must have been given and received with an understanding that the cause should go in favor of the giver, it is indeed impossible to say. But until it is produced, I do not see why we should believe it.

But I am myself prepared to go a little further. I think I see reasons why we should not believe it. The absence of all evidence that Bacon's decrees were unjust, coupled with the consideration that evidence could hardly have been wanting if they were, makes it in my opinion extremely improbable that they were bought. It would be absurd to suppose that the only suitors who attempted to gain their causes by bribery were those whose causes were good. If many decrees were bought, some must have been unjust. Now by every unjust decree, if one man "got what he had paid for," another lost what he was entitled to. Every man so aggrieved had some means of redress, and *after Bacon's conviction* he must have had every encouragement and advantage in pursuing it; for the practice of corruption being admitted, the *presumption* would be against the judgment. How many, then, of Bacon's decrees were appealed against? and of these how many were reversed? If none or few, how can we believe that he had sold them by the hundred? If many, where are they? Reversals of decrees in Chancery

must be recorded somewhere ; and yet (except a somewhat loose assertion in a manuscript of Lord Chief Justice Hale's, published by Hargrave) I can find no mention of any such reversals anywhere. Lord Hale, it is true, in tracing the origin of the jurisdiction of the Lords in reversing equity decrees, mentions the censure of Bacon "for many decrees made upon most gross bribery and corruption," — words sufficiently justified by the terms of the sentence and submission, and grounded probably upon nothing more, — "and this," he adds, "gave such a discredit and brand to the decrees thus obtained, that *they were easily set aside*, and made way in the Parliament of 3 Car. I. for the like attempts against decrees made by other Chancellors." Now that the decrees made by Bacon upon the cases, in which presents were admitted to have been received were thereby discredited, we may safely conclude : the presumption, as I said, would of course be against them ; and if by "easily set aside" be meant only that, their authority being lost, the right of appeal against them was easily admitted (and such may very well be the meaning, for this is the point which Hale was considering), I can easily believe that also. But if he means that they were easily reversed on appeal, that is, that many of them were reversed, I still ask where the evidence is. Hale is so great an authority, that — though manuscripts not published or left for publication by the writer are to be received with caution, as probably containing some loose suggestions which he intended to verify at more leisure — any assertion of his is well worth inquiry. But he was a boy when these things happened. He was writing, it would seem, after the Restoration. His information, so far as it rests upon his personal knowledge and judgment, must have been derived from documents which were then, and should be still, accessible. Where are we to look for these documents ? From the passage I have quoted, I should have

been led to look in the records of the proceedings of the House of Lords; for he is obviously speaking of reversals of decrees in Chancery "by an inherent original jurisdiction" in that house; which jurisdiction, he tells us, had its rise upon three occasions: the first being this case of Bacon, whose decrees being made upon bribery and corruption, were "easily set aside" and made way for "the like attempts" seven or eight years after; and this would certainly lead one to suppose that Bacon's decrees were set aside by the House of Lords in virtue of this supposed original jurisdiction, and to look in the Lords' Journals for traces of them.

But the next page seems to make this inquiry superfluous; for there he tells us that he "could never yet see any precedent" — he does not say any other, but any precedent — "of such proceeding in the Lords' House of *greater antiquity than 3 Car. I.*" And how could that be if it was by them that "many of Bacon's decrees had been easily set aside"?

Moreover, that Hale had seen no records of such proceedings upon Bacon's decrees is made still clearer by the passage which immediately follows: —

"I shall now," he proceeds, "show what was *the first attempt* of setting up this jurisdiction in the Lords' House, and what success it had.

"Before the Parliament of 18 Jac., when the Lord Chancellor Bacon was censured for corruption, the course for reversal of decrees was, — either by petition to the King and thereupon a commission issued to examine the decree and proceedings, whereof there are some precedents; or else to set it aside by act of Parliament; and such was the proceeding of 26 Maii 21 Jac. for reversing a decree for the felt-makers and some others about that time."

This proceeding (I should observe) appears in the Commons' Journals; but I cannot gather from the notes by whom the decree in question was made. However, it

was not one of those upon which Bacon had been charged with corruption.

“But even in these latter Parliaments in King James’s time, the reversal of decrees by the inherent power of the Lords’ House was *either not known*, or so new that it was *scarce adventured upon by the Lords*.”<sup>1</sup>

And he then goes on to relate the proceedings upon an appeal against a decree made, not by Bacon, but by Bishop Williams, who succeeded him.

If therefore any of Bacon’s decrees were reversed, it was not (so far as Hale could discover) by the House of Lords; but must have been either by act of Parliament, or by the King’s commission. Yet in the table of contents to the Statutes at Large a list is given of the titles of private acts; and I have searched in vain there for traces of any such reversals. From the Commons’ Journals I find indeed that about the time of his fall several bills for the reversal of decrees in Chancery were brought in; but I cannot find that any one of them reached a third reading. I find also that about three years later another bill of the same kind, and one which very nearly touches the point in question, was brought in; namely, “An act to avoid a decree procured indirectly and by corruption between the Lord and Lady Wharton, etc., and Edward Willoughby, Esquire.” It was read a first time on the 13th of March, 1623–24; and this was one of the cases in which a present had been received by Bacon, *pendente lite*. If this bill had passed, therefore, it would have been one case in point. But I cannot trace it beyond the second reading, and no such title is to be found among the private acts. I conclude therefore that it did not pass; and if so, the fact tells the other way.

<sup>1</sup> *The Jurisdiction of the Lords’ House, or Parliament, considered according to Ancient Records*. By Lord Chief Justice Hale. To which is prefixed by the editor, Francis Hargrave, Esq., an introductory preface, including a narrative of the same jurisdiction from the accession of James the First. London, 1796, p. 195.



Another fact which I cannot well reconcile with the supposition that many of Bacon's decrees were reversed in this way is supplied by a note of his own, set down about the end of the year 1622. It occurs in a sheet of memoranda for a conversation with Buckingham's mother, and runs thus: "You may observe that last Parliament," — meaning the session which commenced on the 14th of November and ended on the 18th of December, 1621, — "though an high-coming Parliament, yet *not a petition*, not a clamor, *not a motion*, not a mention of me."

Upon this point therefore the records of Parliament tell distinctly and almost decisively in Bacon's favor. They show that the circumstances of his conviction did encourage suitors to attempt to get his decrees set aside; that several such attempts were made, but that they all failed; thereby strongly confirming the popular tradition reported by Aubrey, "His favorites took bribes: but his Lordship always gave judgment *secundum æquum et bonum*." His decrees in Chancery stand firm. There are fewer of his decrees reversed than of any other Chancellor."

If on the other hand they were reversed by a commission appointed for the purpose, we must surely have had some news of it. Yet I cannot suppose that either Hale himself or his editor, who prefaces the tract with an elaborate investigation of the whole subject, had heard of any such proceeding. They could not but have mentioned it if they had.

Upon the whole, therefore, I think I may conclude either that the decrees mentioned by Lord Hale were considered as *ipso facto* set aside by the admission of corruption (which could hardly be, and even if it were could not be taken to prove more than is admitted in the confession), or that he used the words loosely, meaning only that they were easily allowed to be called in question (which might be true, and yet upon question they

might all be found just), or, lastly, that he was speaking without book. And either way I may still ask, Where is the evidence of justice perverted? Till some evidence is produced to that effect, I may still believe Bacon's own judgment upon his own case to be true. He expressed it on two occasions; privately indeed, but clearly and unequivocally. The first was in his letter to Buckingham, written from the Tower on the 31st of May, 1621; in which, after entreating him to procure his discharge and not let him die in that disgraceful place, he proceeds: —

“And when I am dead, he is gone that was always in one tenor, a true and perfect servant to his master, and one that was never author of any immoderate, no nor unsafe, no (I will say it) not unfortunate counsel; and one that no temptation could ever make other than a trusty and honest and thrice-loving friend to your Lordship; and, howsoever I acknowledge the sentence just, and for reformation's sake fit, *the justest Chancellor that hath been in the five changes since Sir Nicolas Bacon's time.*”<sup>1</sup>

This was written in the season of his deepest distress. The other occasion I cannot date. But I take the words to express his deliberate judgment, imparted to the confidential friends of his latter days; imparted privately, and (it would almost seem) under some injunction to keep it private; for Dr. Rawley, whose affectionate reverence preserved the record, took the precaution to write it in a cipher, and never published or alluded to it in print. It is found in a commonplace book, begun apparently soon after Bacon's death and containing memoranda of various kinds, — most of them, especially in the earlier part, relating to him and his works. The first few pages are filled almost entirely with apophthegms; two or three of which are written in a kind of simple

<sup>1</sup> Above, p. 518.

cipher, the Greek character being used for the consonants, and the first five numerals for the vowels; the rest in Rawley's usual hand. Opposite to many of them is written "stet," with a number affixed; which means no doubt that they were to be included in the collection of Bacon's apophthegms which were afterwards printed in the second edition of the "Resuscitatio." At the top of the first page stands this sentence, written in the cipher and not marked or numbered; a sentence which I suppose Rawley had been forbidden to publish, but could not allow to perish:—

"I was the justest judge that was in England these fifty years. But it was the justest censure in Parliament that was these two hundred years."

Now if instead of Lord Macaulay's view of the case the later ages should adopt Bacon's own (and although he was a party so deeply interested, I really believe it to be much the more impartial of the two, self-love in a mind which finds its highest pleasure in knowing and believing the truth being far less fatal to fairness of judgment than the love of rhetorical effect in a mind rhetorically disposed), they will escape the other difficulties, and without refusing to believe anything to his disadvantage of which there is any pretense of proof, they may nevertheless "name his name with reverence," as that of a man to be respected for his moral, as well as admired for his intellectual, qualities. For if his acts of corruption did not involve injustice or oppression to either party, whether in the form of extortion or deception or false judgment, they were acts compatible, not indeed with the *highest* moral condition,—for a more sensitive morality joined with so clear a judgment would have started at and shrunk from them,—but certainly with a *high* condition of all the other moral virtues. A man might be guilty of them, and yet be just and brave and temperate

and truthful and patient and diligent and generous and liberal and unselfish; he might have "bowels of mercies, kindness, humbleness of mind, meekness, long suffering;" he might be forbearing and forgiving, without "bitterness or wrath or anger or clamor or evil speaking or malice;" he might be a man who "fulfilled the law" by loving his neighbor as himself. I could feel respect for the moral condition of such a man, though I thought that in some things he had been negligent, thoughtless, or faulty, just as I can feel respect for the intellect of a man who is wise in most things, though he may have made mistakes in some. And it is surely possible to conceive gifts both given and taken, — even between suitor and judge while the cause is proceeding, — without any thought of perverting justice either in the giver or the taker. In every suit both sides are entitled to favorable consideration, — that is, to the attention of a mind open to see all that makes in their favor, — and favorable consideration is all that the giver need be suspected of endeavoring to bespeak, or the receiver of engaging to bestow. The suitor almost always believes his cause to be just, though he is not always so sure, and in those days had not always reason to be so sure, that its merits would be duly considered, if the favorable attention of the judge were not specially attracted to them; and though the judge was rightly forbidden to lay himself under an obligation to either party, it must be remembered that in all other offices of dignity and in all the gentlemanly professions, gifts of exactly the same kind — fees, not fixed by law or defined as to amount by custom or recoverable as debts, but left to the discretion of the suitor, client, or patient — were in those days the ordinary remuneration for official or professional services of all kinds. It was not thought gentlemanly to bargain about terms or demand payment. The great man merely received freely what was assumed to be freely given. Lord Treasurer

Burghley saw no impropriety in accepting a purse with a hundred guineas in it from a bishop who felt thankful to him for furtherance in obtaining his bishopric. I do not suppose that his son Robert thought it wrong to receive "the £40 which Mr. Downing promised him for his friendship" in the "Beccles cause:" that is, for moving his father "for his good and lawful favor in the Corporation's behalf," and so bringing the cause to a good end. And when Lord Treasurer Suffolk was questioned in the Star Chamber for having (among other things) taken money for favor in transactions with the Treasury, the charge was not for taking the money simply, but for taking it in such a manner as to make the payment of the money a condition of despatching the business. The law officers of the crown derived, I fancy, a considerable part of their income from New-year's gifts and other gratuities presented to them both by individuals and corporations whom their office gave them opportunities of obliging; nor would the acceptance of those gratuities have been imputed as a fault so long as they were not employed as inducements to some unlawful act — some neglect or violation of duty. The practice was a bad one, and in the "New Atlantis" it was forbidden.<sup>1</sup> But it was the practice in England up to James the First's time at least; and the traces of it are still legible in the present state of the law with regard to fees; for I believe it is still true that the law will not help either the barrister or the physician to recover an unpaid fee, the professions being too liberal to make charges, send in bills, or give receipts, or do anything but take the money. In Bacon's time, therefore, almost all the men who rose to be judges

<sup>1</sup> "And when we offered him some pistolets, he smiling said: 'He must not be twice paid for one labor;' meaning (as I take it) that he had salary sufficient of the state for his service. For (as I after learned) they call an officer that taketh rewards, *twice paid*.'" "We offered him also some twenty pistolets; but he smiled, and only said, 'What? twice paid!'" — *New Atlantis. Works*, vol. i., pt. ii., pp. 363, 364.

had probably been accustomed in the course of their professional career to this kind of irregular tribute ; and an attorney general transferred to the woolsack, seeing nothing unusual in it, might the more easily overlook the impropriety. Indeed, in any man of the time except Bacon himself, such oversight would hardly have surprised me : it was not much more than neglecting to disturb a convenient arrangement to which he had always been accustomed. But I should have expected Bacon to have considered it, and to have seen beforehand all the objections to the practice which he saw so clearly as soon as he was called upon to justify it.

Among the many lessons suggested for our instruction by this tragic history, — and to those who can believe with me that to improve the condition of mankind in general and his own country in particular was the ruling passion of Bacon's life, there can be no tragedy more profoundly pathetic, — there is one which is so rarely needed that it may be easily overlooked, and yet is of so great importance to those who do need it — of whom Bacon was certainly one — that it deserves to be made conspicuous. And this is, to beware of undervaluing the possession of money when the possession of money means independence. Wiser for others than for himself, he could represent to Villiers the importance of having an income above his expenditure, and could put it upon the true ground, namely, that he might be in a condition “to despise money when it crossed reason of state or virtue.” And if the narrowness of his own income during the first half of his life had made him a saver instead of a borrower, and (leaving his disposition otherwise unaltered) had taught him to keep and invest, to be sparing in expense, to look closely after his dues, and to require strict accounts from his servants, he would probably have left to posterity an unspotted name. Putting a higher value upon money, he would

have been more careful whence it came ; and the possession of an independent fortune would have enabled him always to choose the conditions of service and follow the course which he liked best. Unfortunately the continual delusive encouragements by which in his early years Elizabeth retained him in her service made borrowing seem justifiable for the time, even as a matter of thrift and prudence, and at the same time made lenders easy to find and to deal with. Thus he contracted a habit of borrowing upon interest, of which it seems he never could cure himself, even when his income was ample for his wants ; and to this expensive way of supplying himself with money was added not only a very easy liberality in the spending, but a carelessness in the keeping of it, which would be hardly credible if we did not know how extremely difficult it is to some men to call an inferior to account for offenses against themselves. If the stories told are true, his money was kept in drawers from which his servants could help themselves at will. In the year 1655, a bookseller's boy heard some gentlemen talking in his master's shop ; one of them, a gray-headed man, was describing a scene which he had himself witnessed at Gorhambury. He had gone to see the Lord Chancellor on business, who received him in his study, and, having occasion to go out, left him there for a while alone. "Whilst his Lordship was gone, there comes," he said, "into the study one of his Lordship's gentlemen, and opens my Lord's chest of drawers wherein his money was, and takes it out in handfuls and fills both his pockets, and goes away without saying any word to me. He was no sooner gone but comes a second gentleman, opens the same drawers, fills both his pockets with money, and goes away as the former did, without speaking a word to me." Bacon, being told when he came back what had passed in his absence, merely "shook his head ; and all that he said was, 'Sir, I cannot help myself.' " This, it is true, is but

the recollection in 1691 of a conversation overheard by a shop-boy in 1655, relating to a matter which took place not later than 1620 ; and as he knew nothing about any of the parties, it does not rank high as evidence. But it is nevertheless told so naturally, and the answer attributed to Bacon seems so much more likely to have been remembered than invented, that I incline for my own part to believe the story; though I cannot accept the relator's comment,<sup>1</sup> to whom Bacon's manner of receiving the information appeared so strange that he thought his servants must have had some mysterious power over him. Had that been the case, I can hardly think that he would have betrayed it so; it would have been so easy to pass it off as a thing done with his knowledge and approbation; whereas, if it was only a mournful acknowledgment of an infirmity which he was conscious of but could not conquer, the manner of it was quite natural, and the only thing difficult to understand is the degree of the infirmity. In lesser degrees none is more common, but carried to this extent it certainly draws hard upon the power of belief. And yet we have had since a very conspicuous instance of the very same infirmity exhibited in a degree scarcely less excessive, by a man of as great a spirit, as capable a mind, a far more imperious will, an earlier training in the government and management of men, in the administration of great affairs, and especially in the raising and husbanding of money; a man not brought up in any wasteful habits or troubled with any expensive tastes; a younger son, of habits extremely retired and studious, who, having entered life with a scanty provision of £300 a year, and meant to make a fortune at the Bar, found himself before he was twenty-five in possession of an official income, wholly applicable to his

<sup>1</sup> "He did agree with them in their opinion of my Lord Bacon, but my Lord had a fault, whatever it was he could not tell. But, saith he, I myself," etc., and then follows the story.



private purposes, of more than twenty times the amount; and at the same time to a position in the state which placed at his disposal for public purposes the whole wealth of the nation; a man so sensible of the importance and so tenacious of the reputation of pecuniary independence that no pressure of embarrassment would induce him to accept help either from the city of London or from the King himself, though pressed upon him by both in the most liberal and delicate manner, — who was nevertheless compelled to accept during his life, from private friends, a sum of £10,000, to clear him of debt, and yet left at his death other debts to the amount of £40,000, which was paid to his executors by Parliament, because his estate afforded no means of defraying them, and with nothing to show for it except an enormous and unjustifiable expenditure in the servants' hall. It seems impossible to account for the condition of William Pitt's private affairs during his life and at his death except by systematic dishonesty in some of the people about him; or for his continuing so long to endure it, except by some invincible disinclination to let it be investigated and detected. Yet no one ever suspected Pitt of having anything to fear on his own account from what the strictest inquiry into the proceedings of his servants might bring to light. He regarded it as a complaint about money, which he felt to be beneath him, forgetting that independence is forfeited by owing money which you cannot pay, quite as much as by accepting money which you cannot claim. Had he lived two centuries earlier, when the greatest persons saw no indignity in receiving presents of money, he might have been as careless about the receipt as the expenditure: and then the parallel would have been nearly complete. As it was, he preserved the reputation of being superior to all pecuniary temptations, but it was at the expense of the friends and creditors who paid the money which he had spent but not possessed.

But if Bacon was unjustifiably careless in all that related to money,—that is, his own money, for in the service of the crown, and in other men's affairs, he was a careful bargainer and administrator, — he must have been in all that related to *time* a strict economist and an excellent manager. When we consider the delicacy of his constitution, his frequent illnesses, and the number of hours that must have been daily absorbed by official or professional business which has left no trace, it is wonderful to think how much work he got out of himself. This was mainly due, no doubt, to his natural gifts — the quickness of his apprehension, and the tenacity of his memory, which enabled him to carry his library in his head and pursue his studies in every vacant interval. Dr. Rawley, who had the nearest view of him in the studies of his later years, was at such a loss to account for the extent of his knowledge that he ascribed it to a kind of inspiration. “For though he was a great reader of books,” says he, “yet he had not his knowledge from books, but from some grounds and notions from within himself.” And we now learn from Peter Böener that he “seldom saw him take up a book. He only ordered his chaplain and me to look in such and such an author for a certain place, and then he dictated to us early in the morning what he had invented and composed during the night.”<sup>1</sup> But though a man who can remember and recall at will whatever he has once known will accumulate knowledge with a facility and rapidity wonderful to those of us who have to seek for it again as often as it is wanted, we must also suppose that the ever-increasing stores were so arranged as to lie conveniently together and be readily taken up: for then the broken intervals of time can be made available for the pursuit of connected thoughts.

And as Bacon was a careful economist of his time, so was he also of the health and spirits which enabled him

<sup>1</sup> *Athenæum*, June 10, 1871.

to make use of it. "He was no plodder upon books," says Rawley, "though he read much: . . . for he would ever interlace a moderate relaxation of his mind with his studies,—as walking or taking the air abroad in his coach," gentle exercise on horseback, playing at bowls, "or some other befitting recreation; and yet he would lose no time; inasmuch as upon his first and immediate return he would fall to reading again, and so suffer no moment of time to slip from him without some present improvement." He was also very careful about his diet, which the delicacy of his constitution had always obliged him to study: and though I do not suppose that his pathology would be allowed by modern science, he found out how to keep himself fit for work by simple means. He had a recipe for the gout from which he always found speedy relief; and for the ordinary troubles of indigestion, against which nature had not armed him, he pursued a course of mild alteratives. His morning draught of three grains of nitre in thin warm broth, and his weekly dose of a drachm and half of rhubarb infused into a draught of mixed wine and beer, we knew from Rawley. And from the information recently supplied by Mr. Lof-felt we are now able to add the report of his domestic apothecary, who ought to be the best authority:—

"Bacon was a great lover of physic, paying great attention to his health. Every morning he took for breakfast a scruple of cremor<sup>1</sup> tartar in some chicken broth, which I brought him. Once a week, at seven o'clock in the evening, he took a soft purgation; a quarter of an ounce of rhubarb, with some grains of Schoenanthi, together soaked in wine for an hour, then wrung out well and without using any fire. Having taken this, he awaited the result till eleven or twelve o'clock at night. During that period he studied, when every one had gone to bed except his valet. For the rest he was very frugal."<sup>2</sup>

He could make nothing of a great dinner. He said

<sup>1</sup> Sic.

<sup>2</sup> *Athenæum*, June 10, 1871.

“if he were to sup for a wager he would dine with a Lord Mayor.”<sup>1</sup>

His personal character and disposition, though he writes very little about himself, comes out very distinctly in his correspondence; and being quite in accordance with all the reports we have from those who saw him nearest and knew him best, I suppose that among those who have patience to read his letters all through in their natural order, with due regard to the circumstances (for the few that are quoted here have been selected as parts of his story rather than as illustrations of his disposition), there will be little difference of opinion about it. What difference there is will be rather as to the sentiments with which it should be regarded than as to the thing itself. All the evidence shows that he was a very sensitive man, who felt acutely both kindness and unkindness, but that he was at the same time remarkably free from the ordinary defect of sensitive natures, — irritability and aptness to take offense. Two or three letters of frank expostulation upon ill-usage remain to show that when he was ill-used he could feel it; but he never pursued or remembered any quarrel of that kind, or allowed it to influence his conduct. His official duties brought him now and then into rough collision with opponents or rivals, leading to sharp speeches; and he had occasionally to give his opinion upon the conduct or qualifications of a man whom he did not think well of. But I am not aware of any case in which he gave an opinion which he had not a perfect right to entertain, or which there is any reason to suppose that he did not honestly entertain, or which, if he did entertain it, he was any way forbidden to express. He has been accused of ill-will to Coke; and if to distrust a man's judgment, to dislike his ways, to apprehend mischief from his management, and to be treated by him with contempt, is to bear him ill-will, the charge

<sup>1</sup> Apophthegms from Rawley's *Commonplace Book*.

cannot be denied. But to me the demeanor of either towards the other seems nothing more than the legitimate and indeed inevitable expression of the difference of character which nature had assigned to the two men. Being such as they were, and being engaged in the same work, what could they do but disagree? Each thought the other was marring it. But it would be as reasonable to infer ill-will to Bacon on the part of Coke because he said the "Novum Organum" was only fit for the Ship of Fools, as to infer ill-will to Coke on the part of Bacon because he said it would be a good thing to remove him from the Chief Justiceship, and a bad thing to restore him to the Council. It was not ill-will on either side: it was only a difference of opinion which, under the circumstances, could not express itself except in terms of censure. Coke thought the "Novum Organum" a foolish book. Bacon thought Coke a dangerous man, both on the Bench and at the Council Board. But wherever the comparison was not forced upon him by having a piece of work to do which he found he could do better, he was a very favorable judge of other men's abilities, and formed a very modest estimate of his own. The mistakes he made were oftener from giving too much credit to other men for abilities or virtues than too little. Even as a philosopher (the part which in his own opinion suited him best) he never took credit to himself for any extraordinary capacity. He thought he had struck into the right path by accident, and that his merit lay in endeavoring to keep it and walk in it. The qualities for which he gave himself credit were only patience and faith and love of truth, carrying with it confidence in the power of truth. And the long gestation of the project, together with the many successive shapes in which the exposition of it was cast and recast before it was allowed to come forth, are so many proofs how little authority he expected it to derive from being his. Nor is there anything in this to cause

surprise. Our estimate of ourselves rests always upon internal evidence. The man with ten talents thinks much or little of himself, the man with one talent thinks little or much, not according to the number of the talents, but according to his nature. Bacon had by nature a large faculty of hope; but it was hope from things that lay out of and beyond himself, from ideas, from principles, from "the fortunes of the human race," from God, — meaning by God the divine purposes as he inferred them from his theory of the divine character and government. But he attached little importance to himself, except as an instrument for their accomplishment. And this absence of self-importance was in one respect — to the world, if not to himself — a disadvantage. It made him content to occupy a position in the State which was not only beneath his reasonable pretensions, but without the authority requisite for carrying his principles into action. With a stouter habit of self-assertion, a man of his abilities might perhaps have compelled the government to take him in upon his own terms, though it is more likely that he would have provoked them to shut him out. But whatever the effect might have been, the thing itself could not have been. The habit of self-assertion was not at his command. Audacity, to have its effect, must be genuine and spontaneous; and when a man who is naturally modest attempts to put on the air of audacity, he only makes himself offensive.

The pliancy and submissive attitude towards his official superiors, which is generally blamed in him as an unworthy condescension, came to him no doubt more easily and naturally by reason of this peculiarity. But I am not so sure that he would have acknowledged it as a fault. What influence he possessed had to be exercised through other people, and could not have been exercised through them upon any other condition. In contemporary transactions we understand this quite well; and

if I were to inquire among members of the House of Commons whether their business could be transacted successfully without bowing to the humors of those who have authority over them,—I mean their constituents and “the House,”—I should expect the necessity to be most readily acknowledged by those to whom the thing is most distasteful. Should a time come when the uncompromising sincerity of schoolboys shall be extended to the relations of adult life, and men shall know by the simple and direct action of human speech what each really thinks of the other, the world will probably be both better and happier for it. But as the world was in Bacon’s time and still is in our own, if you want a man to help you in your work you must beware of affronting him, and you will certainly affront him if you do not show him the sort of respect to which he is accustomed and thinks himself entitled.

It has been commonly thought that Bacon repented of having chosen political life for his vocation, and felt that it was both a mistake and a fault. And it is true that he was continually regretting the time which it obliged him to spend in matters which had little interest for him. At the very entrance of his career, while he was still an unsuccessful suitor for his first appointment, he avowed an apprehension “that the ordinary practice of the law, *not serving the Queen in place*, would not be admitted for a good account of the poor talent which God had given him.” He even talked of ceasing to follow it, because it “drunk too much time—which he had dedicated to better purposes.” Afterwards, at the age of five and forty, when as one of the Learned Counsel he had been much employed for some years in state-business of importance, he still said with the Psalm, *multum incola fuit anima mea*,—his mind had been absent from his work; and acknowledged it as an error, that “knowing himself to be by inward calling fitter to hold a book than to play a

part, he had led his life in civil causes, for which he was not very fit by nature, and more unfit by the preoccupation of his mind." At the height of his fortune, when he held the highest office under the Crown and little thought that he should ever have to part with it except upon his own terms, he was still looking forward with longing to the day when he should be able to descend from his elevation and retire into his study. And when ruin overtook him from the quarter where he least expected it, his old regret came back upon him with a new pain; and he confessed that he had "misspent his talent in things for which he was least fit." For a man who had more inward vocations than one, all this was quite natural. The path which he did not take was the path which would have led to all it promised, in which he would have met no obstructions, no disappointments. If he had carried out his early threat, — "retired with a couple of men to Cambridge," spent his life in exploring the one true path by which man might attain to be master of Nature, and followed it out far enough to find (as he must have done) that it led to impassable places, — and had at the same time seen from his retirement the political condition of the country going from bad to worse for want of better advice and more faithful service, would he not in like manner have accused himself of having misspent his talent in things for which he was less fit than he had fancied, and forsaken a vocation in which he might have helped to save his country from a civil war? The self-condemnation would have been as natural and sincere in the second case as in the first, and would have seemed as just. But if it be supposed that he repented of his choice of a political life, not as being less suited to his tastes and faculties than a life of study, but as being in itself unworthy of him, I cannot think that he would have confessed the charge. When he seriously thought of giving up his profession in early life, it was when he



began to despair of employment in the service of the State. When after the death of Elizabeth he thought again of withdrawing as much as he could from the business of the Learned Counsel, and "putting his ambition only upon his pen," it was when he saw no prospect of attaining a position in Council which would have given him influence enough to do any good. And when in the height of his power and favor he expressed a wish and hope to exchange it for a life of studious leisure, it was always with the proviso that he might first see the relations between the King and his people satisfactorily adjusted. If he ever repented of his labors in the service of the State, it was not because the object had been unworthy, but because the labor had been in vain. And certainly when he looked back upon the results of his political life and compared them with the aims and hopes with which he entered upon it, he did not need the disastrous close to remind him that it had been a failure. He had been very successful in the details of business. All the causes of which he had the management had been well managed. Nothing had miscarried through any want on his part of skill and care in preparation or diligence in execution. He had always been ready for his work at the right time. His advice had generally been fortunate, and had never brought the government into a difficulty. While he acted as a Commissioner of the Treasury the condition of the finances had greatly improved. The rules which he established in Chancery continued (and I believe continue still in a great measure) to regulate the proceedings of the Court. He had never made a cause of the government unpopular by his manner of conducting it. In the House of Commons he had commanded (considering their growing jealousy of all servants of the Crown) an extraordinary amount of favor and confidence. It is wrong indeed to call him, as I have seen him called, the "*leader* of the House;" an office

which, in its modern sense, did not then exist. Bacon was never the leader even of the courtiers, — of the members holding office in the State, or otherwise under the immediate influence of the Court. If they had any leader, it was the principal Secretary. But though he had no authority otherwise, even by the tacit consent of any party, he had been a frequent and most persuasive speaker, whose advice was always listened to with respect, and in that way had done the government a great deal of excellent service. But these things, though necessary and important in their way, were not the kind of benefits which in seeking to rise in political life he had hoped to be instrumental in procuring for his country. They were like the small discoveries in Nature which he blamed mankind for making so much of, when they ought to be aspiring to discover the key of the cipher in which her whole book is written, and to take full possession of her kingdom. They were like the *sordes curarum*, — the recipes for the cure of a few particular complaints, which he complained of the physicians for being content with, when they should be aspiring to detect and remove the causes of all disease and decay in man's body. When he determined to make the service of the State his profession, he hoped not only to deal with difficulties as they came, but to remove the roots out of which they sprang. He hoped to see the divisions of the Church reconciled; the laws reduced into such a condition that every man might learn what the law was; the monarchy established in peace upon the secure foundation of affectionate loyalty and mutual benefit between the sovereign and the subject; and the active spirits of the time relieved from their controversies with each other, and free to unite their forces for the great controversy with Nature which was to end in a conquest promising endless benefits to all alike. And in all this he had failed. His projects for reconciling the High Churchmen and the Nonconformists

he was obliged very soon to abandon as hopeless, and after the conference at Hampton Court he concluded that the best chance of pacifying those controversies was to let them alone, and to discountenance all motions tending to unsettle the arrangements then made. But though the government of the Church proceeded quietly as long as he lived, with little outward disturbance except the occasional silencing of a Puritan or execution of a heretic, the disturbing element was still active within, and had he lived a few years longer he would have seen it not only shaken but overthrown. His project for the reduction of the laws into a manageable shape he pursued longer and more persistently; and would have gladly proceeded with it to the last. But it was a work not practicable by a single man. The assistance which he asked for was not supplied, and all that he could do was to leave on record a suggestion of what ought to be done. His efforts to bring the relations between the sovereign and the subject into better harmony, which was the main object of all his political action from first to last, — and in which I have no doubt that his advice had done much good from time to time in guiding the State clear of rocks on which it might otherwise have struck, — proved nevertheless the most conspicuous failure of all. He lived to see the breach wider than it had ever been, — the nation gradually drawing into two hostile camps; the Crown driven through its necessities into more and more arbitrary measures for recovering strength; the people driven by those measures into a more and more formidable attitude of resistance; and all things gathering for a violent struggle for mastery. All this was disappointment. As he looked round upon the world in the beginning of 1626, it seemed that for any permanent benefit that his country was likely to derive from the labors of his political life, he might as well have spent it as an obscure student at Cambridge or Gray's Inn. And if

as well, surely much better. The political constitution which he had been so laboriously endeavoring to build up, reform, and strengthen would be overthrown by a civil war; while the masculine offspring of the reformed method of studying the constitution of Nature, which he might have been promoting and bringing to perfection all the while, would still survive and flourish. More than twenty years before, when he was thinking seriously of making that the business of his life and forecasting with himself its chances in the world, civil war was one of the contingencies he reckoned upon. He thought it likely that Europe would be overrun with civil wars, in which the learning and science then in vogue might suffer shipwreck, but a science which could prove its worth by works of utility and power would hold out and endure. Of such a science he conceived that he had laid the foundation and marked out the lines, and he had no doubt that in the course of ages it would be taken up by mankind and followed out to its legitimate results. The seed he had sown was sure to grow and come to harvest for the benefit of somebody, and that part at least of his life's labor had not been bestowed in vain. Such being his belief—and it was a belief which remained with him to the last—it was natural that he should look back with regret upon the large portion of his life which he had spent otherwise, spent in sowing seeds whose growth depended upon accidents of weather, and (as it happened) were not destined to bear fruit for the benefit of anybody.

In any other sense than this I do not believe that he ever regretted the time he had spent in faithful service of the State; and if he had been permitted to look forward for two or three centuries, I do not feel sure that his regret would not have turned the other way. For to him his other labors would scarcely have seemed more successful than these. Looking at the products of the

nineteenth century, he would have seen the knowledge of the laws of Nature greatly advanced in many directions, and the credit of it ascribed in great part to himself, but he would have seen also that the advance had been made without his help; that the peculiar method of proceeding by which, and by which alone, he had thought it possible to attain the only end worth aiming at — the power of producing great effects with certainty, — “magnitude and certainty of works” — had been found impracticable; that science was still content to proceed by the old ways which had seemed to him so incompetent; and that in fact, if the new way which he had spent so much labor in contriving and expounding had been kept to himself and perished with him, the progress of science would not have been materially retarded by the accident. And though it is true that he would have found all the men of science not only acknowledging him as their leader and professing to be his disciples, but quoting his precepts and laying down scientific principles in his language, he would have known that he had thought out all those precepts and principles before he was thirty years old, and that if in the first year of the seventeenth century he had written down and published all that he then had to say about natural philosophy, it would have contained in substance everything of his that was to be found of any use in the nineteenth, — leaving the last twenty years of his life free for other work. It was his determination to accompany the announcement of his principles with an example of their successful application, which kept him so long silent. And in that he had failed after all.

I speak of course of the view which Bacon himself would have taken of the case, comparing the actual results with his own anticipations and judging them by his own standard of value. To us, who do not believe in the possibility of such results as he anticipated, and who regard the scientific achievements of these two centuries as

great beyond all reasonable expectation, his part in the progress of modern discovery appears much more considerable. Setting aside his particular method of proceeding, — his new *organum* or logical machine, which is to us only a name, and appears to have been a mistake, — we find in his enunciation of the general principles of philosophical inquiry a light both to guide and to cheer the steps of all explorers of nature, which must no doubt have given both impulse and direction to the general progress. If he did not succeed in making any scientific discoveries himself, or even in pointing out the particular steps by which others were to make them, he delivered a set of cautions as to the use of the human understanding, applicable to the pursuit of truth in all departments, which have scarcely been added to or improved upon since his time. And although they were not in themselves new discoveries (being indeed the essential conditions of all inductive reasoning, — which in every case of successful induction, since men began to infer the coming weather from the appearance of the sky, must have been consciously or unconsciously attended to), they were nevertheless very much in want of a new expositor, for some of the greatest intellects of the world had gone astray through imperfect observance of them; and the manner of exposition was really and entirely new, — an exposition so sound, so clear, so impressive, so moving, and at the same time so sober, simple, and intelligible, that they have carried conviction with them and become the common possession of mankind. What Milton said of Shakespeare, —

“ That each heart  
Hath from the leaves of thy unvalued book  
Those Delphic lines with deep impression took,” —

may as truly be said of Bacon. What Ben Jonson said of him as a speaker, — “No man ever spoke more neatly, more pressly, more weightily, or suffered less emptiness,

less idleness, in what he uttered," — is quite as true of him as a writer. And besides all this he had that mysterious gift to which M. Charles de Rémusat assigns the first place among the causes of his influence in the world, — the quality which he calls greatness, and supposes to reside rather in the manner than in the thought. But whence the manner? I should myself say from the moral character, taking it to be the companion and expression of a certain consciousness of moral elevation. But whatever it is and whencesoever it comes, its office and effect is to command respect both for the speaker and the subject. And whatever may be the value of Bacon's other contributions to science, there is probably no single man whose writings have done so much to dignify the pursuit, or to encourage the hopes and exalt and purify the aims of the pursuers.

But when I attribute to a consciousness of moral elevation that "greatness" in Bacon which (though they would differ as to its nature) most people feel; I am not to be understood as assuming to decide the question as to his moral worth. That same sense of moral superiority, carrying with it that same impression of greatness, may be found in conjunction with moral qualities of the worst kind; nor does the respect which it commands necessarily imply either sympathy or approval. Whether (in the phrase of the debating society) "the character of Bacon was deserving of the approbation of posterity" is a question which posterity must settle for itself. But I think it may be left to the debaters. To form a true conception of the kind of man he was, is of some consequence; for without that we cannot know what respect is due to his opinions. If his objects were all personal and worldly, his opinions were those of a man who considered all things with reference to himself, and not to truth and the good of men. But being once agreed as to what he was, it matters little whether we think him better than our-

selves, or worse, or much the same. Upon that point we shall always differ, accordingly as we rate higher the virtues in which he excelled or those in which he was deficient. The men upon whom posterity pronounces a unanimous verdict for bad or for good are the men about whose lives little is known. Those whose record is full enough to enable us to follow them through their week-day work are subjects of dispute, just like contemporary public men, every one of whom has both admirers and deprecators. Bacon's record is unusually full, and as his life presented to himself many doubtful problems for action, it has left to us many questionable actions for criticism; and among them not a few which he would not himself have repeated or attempted to justify. One thing, however, must be admitted to his advantage. Of the contemporaries whose opinion of him is known to us, those who saw him nearest in his private life give him the best character. I have quoted Toby Matthew's, written in 1618, when he had known him intimately for twenty years.<sup>1</sup> Dr. Rawley's is familiar to everybody. That of Sir Thomas Meautys reveals itself still more expressively in the devotion of his life. Ben Jonson, who had seen something of him off the stage, though we do not know how much, after recording his impression of the "greatness which he could not want" (by which, however, he may possibly have meant only the greatness of intellectual power), adds the significant and affecting remark, that in the days of his adversity he "could never condole in a word or syllable to him — as knowing that no accident could do harm to virtue, but rather serve to make it manifest." And to these testimonies we may now add that of Peter Böener, his domestic apothecary and secretary, who concludes his notice with a wish that a statue were erected to his memory, — not as the projector of the Great Instauration of the sciences or author of the "No-

<sup>1</sup> Above p. 526.



vum Organum," but in acknowledgment of his moral virtues. "Therefore it is a thing to be wished (he having died on the 9th of April, 1626, aged sixty-six years) that a statue in honor of him may be erected in his country, as a memorable example to all of virtue, kindness, peacefulness, and patience."<sup>1</sup>

Though these are partial witnesses, their partiality, being above all suspicion of interested motives, is itself a fact which deserves to be put in evidence. But if Bacon himself had been called on to pronounce judgment on himself, I fancy that he would have been content with some such character as Sir Henry Taylor puts into the mouth of Isaac Comnenus, describing his own : —

"Yet is he in sad truth a faulty man.  
In slavish, tyrannous, and turbulent times  
He drew his lot of life, and of the times  
Some deep and bloody stains have fallen upon him.  
But be it said he had this honesty,  
That undesirous of a false renown  
He ever wished to pass for what he was ;  
One that swerved much and oft, but, being still  
Deliberately bent upon the right,  
Had kept it in the main ; one that much loved  
Whate'er in man is worthy high respect,  
And in his soul devoutly did aspire  
To be it all ; yet felt from time to time  
The littleness that clings to what is human,  
And suffered from the shame of having felt it." <sup>2</sup>

<sup>1</sup> *Athenæum*, June 10, 1871.

<sup>2</sup> *Isaac Comnenus*, end of Act 3.



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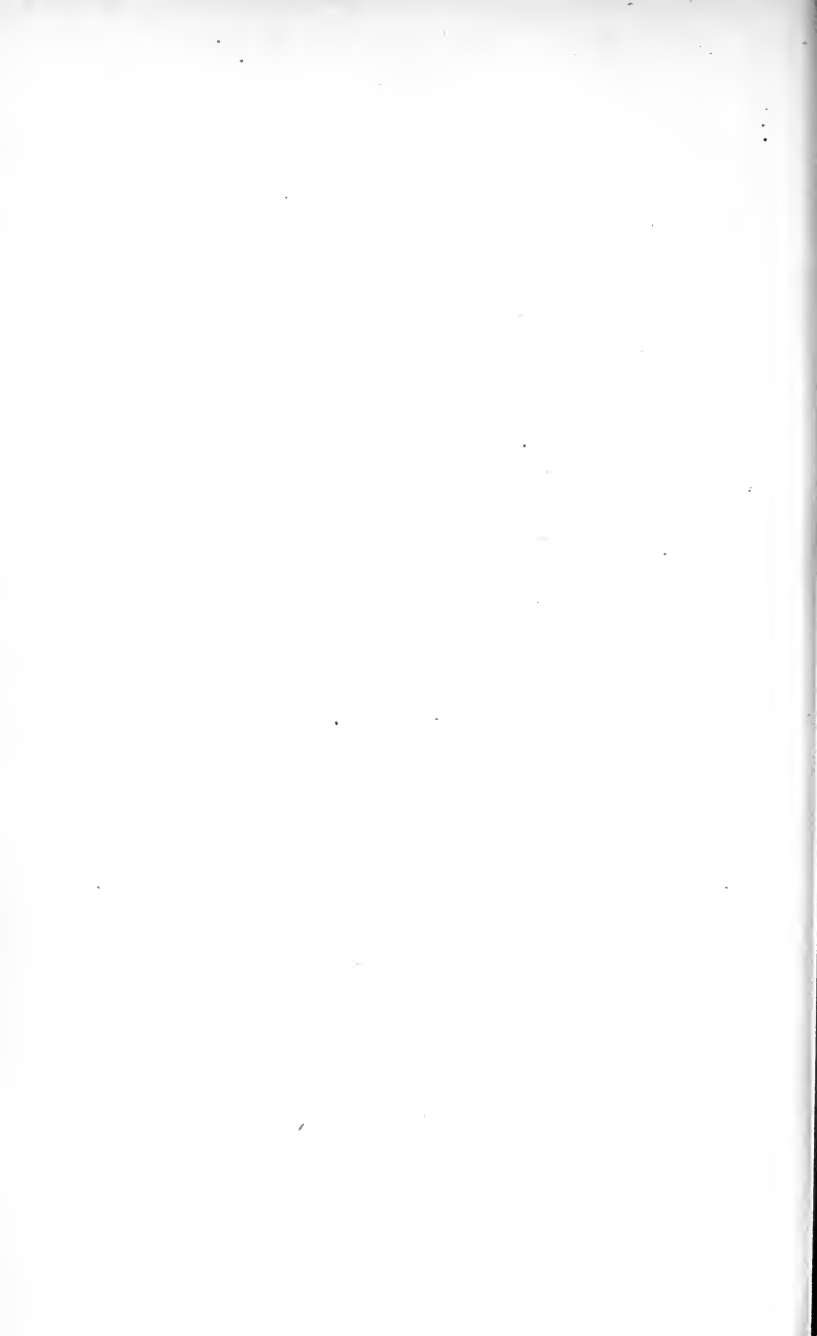
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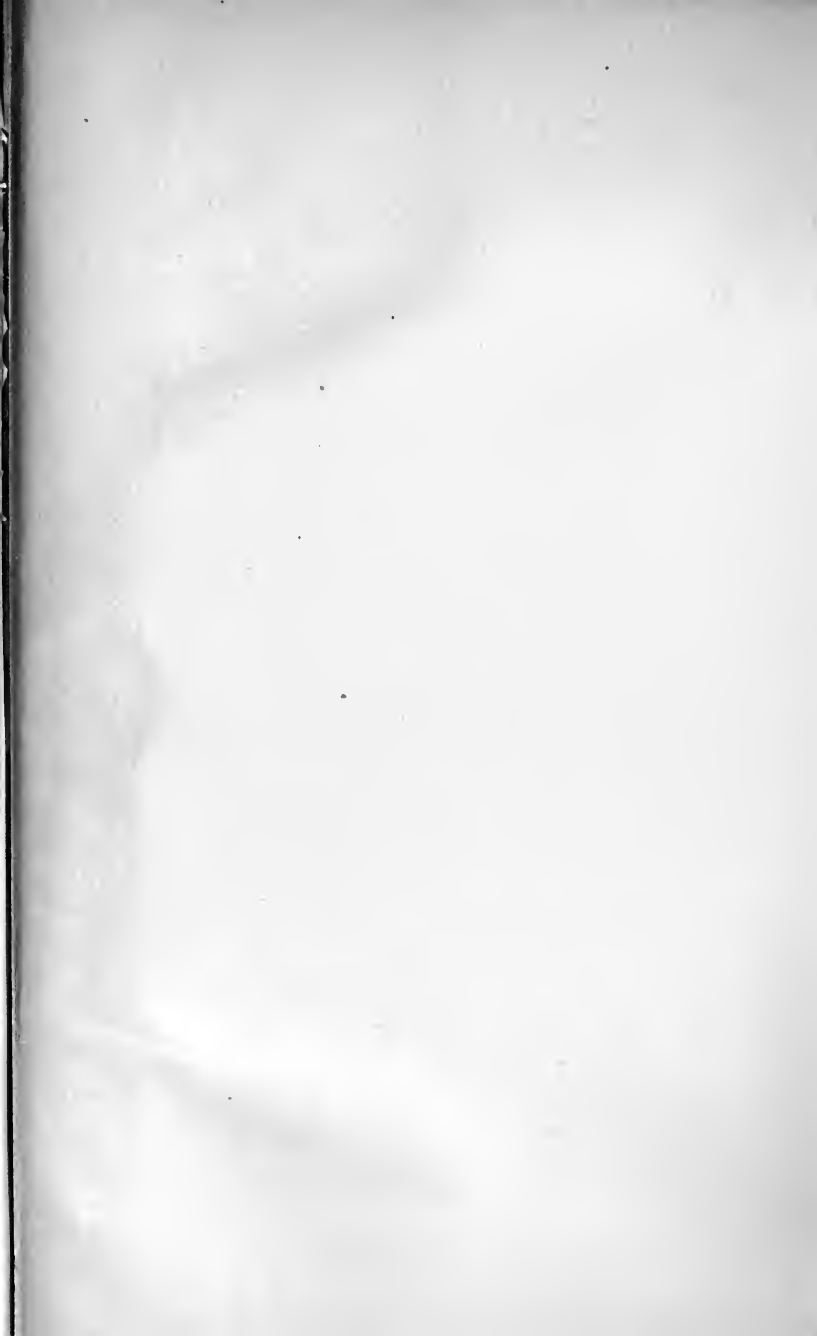
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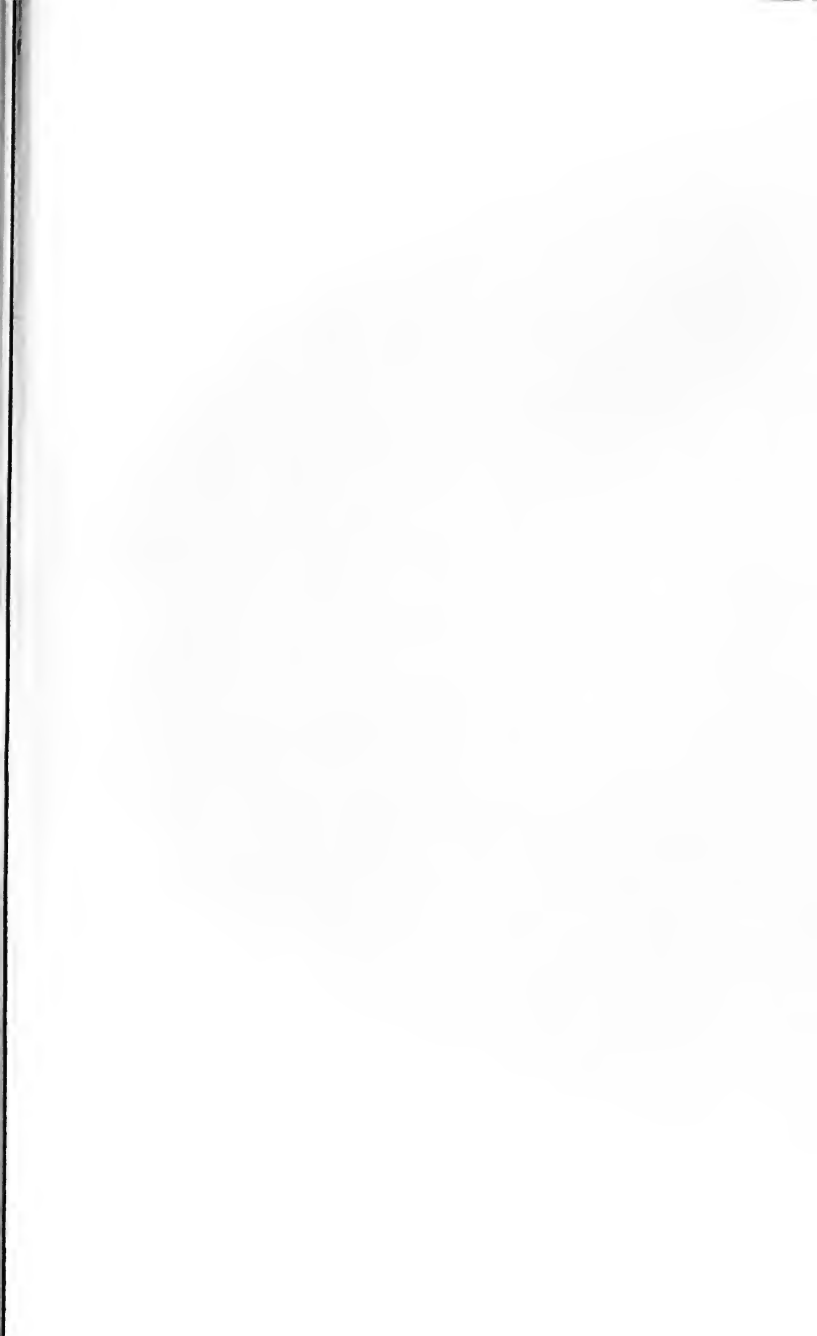
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